

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA, : 10 CR 615 (NGG)

5 :

6 -against-

7 :

United States Courthouse
Brooklyn, New York

8 RONALD HERRON, :

9 June 23, 2014

10 Defendant. : 9:30 o'clock a.m.

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12 TRANSCRIPT OF TRIAL
13 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
14 UNITED STATES DISTRICT JUDGE, and a jury.

15 APPEARANCES:

16
17 For the Government:

LORETTA E. LYNCH
United States Attorney
BY: SHREVE ARIAIL
SAM P. NITZE
RENA PAUL
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York

22 For the Defendant:

23 ROTHMAN, SCHNEIDER, SOLOWAY
& STERN, P.C.
100 Lafayette Street
24 New York, NY 10013
BY: ROBERT SOLOWAY, ESQ.
25 JAMES E. NEUMAN, ESQ.

1 Court Reporter: Gene Rudolph
2 225 Cadman Plaza East
3 Brooklyn, New York
4 (718) 613-2538

5 Proceedings recorded by mechanical stenography, transcript
6 produced by computer-aided transcription.

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11 (The following occurred in the absence of the jury.)

12 THE COURT: All right. Appearances.

13 MR. ARIAIL: Good morning, Your Honor.

14 Shreve Ariail, Sam Nitze and Rena Paul with Special
15 Agent Ami Marayag for the United States.

16 THE COURT: Good morning.

17 MR. SOLOWAY: Good morning Your Honor.

18 Robert Soloway, James Neuman and our paralegal,
19 Samantha Cabral for Ronald Herron.

20 THE COURT: And he is on his way in?

21 MR. SOLOWAY: Yes, Your Honor.

22 THE COURT: We will just wait for the defendant.

23 (Defendant present.)

24 THE COURT: All right. The defendant is present.

25 Mr. Soloway, who is your next witness?

1 MR. SOLOWAY: Shondell Walker.

2 THE COURT: What about Mr. Robinson?

3 MR. SOLOWAY: It is not the defense intention to
4 call Kendale Robinson, Your Honor.

5 THE COURT: All right. Mr. Gentile, could you come
6 on up?

7 MR. GENTILE: Yes, Your Honor.

8 THE COURT: I take it, Mr. Robinson -- from the
9 marshals -- Mr. Robinson is downstairs or is he here?

10 THE MARSHAL: Mr. Robinson is brought up. He is
11 here right now.

12 THE COURT: He is all right. All right.

13 You heard what Mr. Soloway said? Your client is not
14 going to be called by the defense. Please inform him of the
15 same.

16 I thank you very much for assisting the Court and
17 your client in connection with this. Once you have completed
18 that assignment, then we will just -- I think we are finished
19 with this individual, he will be sent back to MDC.

20 MR. GENTILE: Fine, Judge.

21 Thank you.

22 THE COURT: Thank you so much for your help.

23 THE DEFENDANT: Your Honor, can I speak to my lawyer
24 about this for a second, please? We didn't have a
25 conversation about that.

1 MR. SOLOWAY: We had a conversation in the cellblock
2 for a few minutes about it.

3 THE DEFENDANT: He didn't come to see me.

4 THE COURT: That's fine. Where would you like to
5 have this conversation?

6 MR. SOLOWAY: I am finished with the conversations,
7 Your Honor. The decision has been made. I am not calling
8 Kendale Robinson. It appears that Mr. Herron is not in accord
9 with that decision. That's his prerogative and it's my
10 decision not to call him. I am not calling him in the case.

11 THE COURT: All right.

12 MR. SOLOWAY: There is nothing else to say about it.

13 THE COURT: The record has been made about that.

14 THE DEFENDANT: It's against my wishes.

15 THE COURT: I understand, sir.

16 Thank you, sir.

17 MR. GENTILE: Thank you, Judge.

18 THE COURT: Have a nice day.

19 MR. GENTILE: You too, Your Honor.

20 THE COURT: I see Mr. Siegel has arrived.

21 MR. ARIAIL: Why don't we give -- I think if we
22 could let defense counsel and defendant have just a couple of
23 minutes to discuss the issue?

24 THE COURT: Discuss what issue?

25 MR. ARIAIL: Discuss whatever -- discuss whatever

1 disagreement they might have.

2 THE COURT: I understand. They'll have plenty of
3 time because I don't think Mr. Siegel has spoken to his
4 client. Come on up, Mr. Siegel. In fact, I think we ought to
5 bring Mr. Robinson down and bring Mr. Walker up.

6 THE MARSHAL: Very good.

7 THE COURT: So that Mr. Siegel could have a
8 conversation with his client, if he has not already done so.

9 Come on up, sir. Good morning.

10 MR. SIEGEL: Good morning, Your Honor.

11 THE COURT: How are you, sir?

12 MR. SIEGEL: Fine. Thank you.

13 THE COURT: Have you had a chance to talk to
14 Mr. Walker?

15 MR. SIEGEL: I spoke to Mr. Walker about three days
16 ago.

17 THE COURT: Yes?

18 MR. SIEGEL: I would like to just speak to him
19 again, just to confirm what we understand is going to happen.

20 THE COURT: Well, I --

21 MR. SIEGEL: Let me apologize for being late, Your
22 Honor. I had trouble with New Jersey Transit getting --

23 THE COURT: That's all right. The way things are
24 going with this trial, there is no such thing as late. It is
25 just whatever happens to be the circumstance of the moment.

1 So I am not at all concerned about that. But thank you.

2 MR. SIEGEL: Yes.

3 THE COURT: There are a couple of things that I
4 would like you to bring to your client's attention.

5 I note that at the time he pleaded guilty, there was
6 an issue regarding the possibility of a further prosecution of
7 some kind.

8 Do you recall that, Mr. Ariail?

9 MR. ARIAIL: I do, Your Honor.

10 I actually recall it being a very in depth
11 conversation. There were several breaks during the
12 proceedings in which Mr. Siegel stopped the allocution and had
13 side conversations with Mr. Walker. But it was made very
14 clear to Mr. Walker and to Mr. Siegel that the defendant,
15 Mr. Walker, had potential liability for racketeering charges
16 and other charges outside of the scope of the plea agreement.

17 So, yes, I do recall that Your Honor.

18 THE COURT: All right. I just --

19 MR. SIEGEL: I would --

20 THE COURT: Would you like to see the transcript?

21 MR. SIEGEL: Yes, exactly, Your Honor.

22 THE COURT: We are going to provide it.

23 Do you have a copy of it that's not marked up?

24 MR. ARIAIL: I am looking for one now.

25 THE COURT: I think Mr. Neuman is going to hand it

1 to you.

2 MR. SIEGEL: Thank you.

3 MR. ARIAIL: I have the original plea agreement as
4 well.

5 THE COURT: And the plea agreement too? You have
6 that?

7 MR. ARIAIL: I do.

8 THE COURT: All right. This I think will afford you
9 the opportunity to take a look at it briefly.

10 Has he been brought up?

11 THE MARSHAL: He is coming up now.

12 THE COURT: The other thing is that I will make it
13 clear to him, and I think you might want to raise with him,
14 the fact that if he should testify and do so dishonestly, if
15 he should lie under oath, that he could be subject to further
16 prosecution for perjury, and, in addition, if the Court finds
17 that he is giving perjurious testimony, it could affect the
18 sentence the Court imposes upon him when he is sentenced.
19 All right? That's just a fact and the Court has the right to
20 take that into consideration should he not testify truthfully.

21 MR. SIEGEL: I've already took the liberty of
22 relaying that conversation of the Court to the defendant.

23 THE COURT: You can just mention it. Please mention
24 it again because I am going to mention it to him so he
25 understands that those are the risks, that should he not

1 testify truthfully, that he takes. His sentence for the crime
2 that he pleaded guilty to is a minimum of five years, a
3 maximum of 40 years in prison. So that's a substantial range
4 of imprisonment. I just want him to know this so there is no
5 misunderstanding regarding the risks that he takes if he
6 doesn't testify truthfully. That's all.

7 MR. SIEGEL: Correct.

8 THE COURT: I assume he will testify truthfully
9 because that's his job.

10 MR. SIEGEL: Thank you.

11 THE COURT: If he takes an oath to do so. I will
12 tell him that.

13 MR. SIEGEL: Thank you, Your Honor.

14 THE COURT: Okay. He may have just arrived.

15 THE MARSHAL: He is here.

16 THE COURT: He is here.

17 All right. Take a few minutes.

18 MR. SIEGEL: Yes, sir.

19 THE COURT: Since you've already spoken to him once.

20 All right. This, of course, will afford the
21 defense, if there is anything further to be said between
22 Mr. Soloway and Mr. Herron, to have any further conversations
23 right here. I will be here. I am not going away. All right?
24 I will just put on the white noise so we don't hear what you
25 all have to say.

1 MR. SOLOWAY: Thank you, Your Honor.

2 (Pause in proceedings.)

3 THE COURT: By the way, we are going to have another
4 version of the jury charge for you this morning at some point
5 and we will set up a brief charge conference for tomorrow. If
6 you feel you need it, we'll have it. If you feel you don't
7 need it, please confer and let me know.

8 MR. ARIAIL: Your Honor, just to alert the Court,
9 just in terms of one issue, the government has -- believes it
10 will have a brief rebuttal case that I think can be resolved
11 by stipulation. I am waiting this morning to hear from one of
12 the persons who is providing me information about what would
13 be contained in that stipulation.

14 So we are just going to need a few minutes, at
15 least, to talk that through with defense counsel afterwards
16 and then once the defense's case is closed and then also we
17 need to set up in terms of if we are doing summations this
18 morning exhibits and narcotics need to be transferred to the
19 courtroom. So we are just going to need a little break at
20 some point.

21 THE COURT: Okay. We are going to have a break
22 after we finish the testimony.

23 How long is your closing expected to be? You are
24 doing the closing?

25 MR. ARIAIL: No. Mr. Nitze is going to do the

1 closing.

2 THE COURT: Mr. Nitze, we started with you. We are
3 ending with you.

4 MR. NITZE: Yes, Judge.

5 THE COURT: More or less. How long is your closing
6 expected to be?

7 MR. NITZE: In the neighborhood of two-plus hours.

8 THE COURT: All right. And the defense, are we
9 still operating on the one-plus theory?

10 MR. SOLOWAY: I believe, yes, between an hour and 15
11 and an hour and a half.

12 THE COURT: And then the rebuttal, we don't quite
13 know but we think what?

14 MS. PAUL: An hour.

15 THE COURT: All right. We are just going to wait on
16 Mr. Siegel then.

17 (Pause in proceedings.)

18 THE COURT: All right. Mr. Siegel?

19 MR. SIEGEL: Yes, Your Honor.

20 THE COURT: Are you ready?

21 MR. SIEGEL: I am.

22 THE COURT: Let's call in Mr. Walker, please.

23 (Shondell Walker is present.)

24 THE COURT: All right. Right up here, sir.

25 MR. SIEGEL: Here, Mr. Walker.

1 MR. WALKER: Yes, sir.

2 THE COURT: All right. What is your name, sir?

3 MR. WALKER: Walker, Shondell.

4 THE COURT: Mr. Walker, you've had a chance to talk
5 with your attorney, Mr. Siegel, about the possibility of your
6 testifying in this case, United States against Ronald Herron;
7 is that right?

8 MR. WALKER: Yes.

9 THE COURT: Mr. Siegel?

10 MR. SIEGEL: Your Honor, I have spoken with
11 Mr. Walker. I have advised him that if he elects to testify,
12 he must testify truthfully. If he does not testify
13 truthfully, then that can, number one, be held against him at
14 sentencing before you, Your Honor, and it can also subject him
15 to further criminal prosecution for perjury.

16 I have reviewed his plea agreement as well as the
17 plea minutes in this case. I have also advised Mr. Walker,
18 and he acknowledges that, is that pursuant to the terms of the
19 plea agreement when this case is over the prosecution may
20 elect to then go ahead and prosecute him for a charge of 1961,
21 which is a racketeering charge, and use certain of his plea
22 statements in his plea as certain alleged predicate acts.

23 I have explained all this to Mr. Walker, that if he
24 elects to testify, there is a possibility that may happen.

25 THE COURT: All right. Mr. Walker, do you

1 understand everything that your attorney has advised you
2 regarding your possible testimony in this trial?

3 MR. WALKER: Yes.

4 THE COURT: Do you understand that having pleaded
5 guilty to -- I think it's a drug conspiracy?

6 MR. SIEGEL: Correct, Your Honor.

7 THE COURT: That you are subject to a minimum
8 five-year sentence and a maximum of 40 years in jail at the
9 time that you are sentenced in the future?
10 Do you understand that?

11 MR. WALKER: Yes.

12 THE COURT: Okay. It is important that you
13 understand the significance of taking an oath to tell the
14 truth and then telling the truth from the witness stand in
15 front of the jury in this case. Do you understand the
16 importance of that?

17 MR. WALKER: Yes.

18 THE COURT: Do you understand the possible
19 consequences that have been outlined by your attorney if it
20 turns out that you did not tell the truth before the jury
21 after having sworn to tell the truth? Do you understand that?

22 MR. WALKER: Yes.

23 THE COURT: Okay. Is it your wish to testify in
24 this case with those warnings in mind?

25 MR. WALKER: Yes.

1 THE COURT: So you wish to testify?

2 MR. WALKER: Yes.

3 THE COURT: All right. Mr. Siegel, have you given
4 your client any advice as to whether he should testify in this
5 case?

6 MR. SIEGEL: Your Honor, that would be a violation
7 of the attorney-client privilege, whatever advice I gave to
8 Mr. Walker. So I don't think I am in a position to answer
9 that question.

10 THE COURT: That's fine.

11 MR. SIEGEL: But I will say, as part of my duties
12 and obligations as an attorney, I have explored all matters
13 and issues with Mr. Walker.

14 THE COURT: All right. Very well. Fine.

15 Are we ready to go with the next witness?

16 MR. SOLOWAY: Yes. Yes, we are, Judge.

17 There is just something I want to put on the record.

18 THE COURT: On the record in front of the witness?

19 MR. SOLOWAY: No.

20 THE COURT: Let's take the witness out.

21 Sir, we are going to have to do something before you
22 come and testify and then you will be called to testify.

23 Do you understand that?

24 MR. WALKER: Yes.

25 THE COURT: Okay. Thank you very much, sir.

1 Mr. Siegel, thank you very much.

2 MR. SIEGEL: I will stand by, Your Honor. If I can
3 just speak to Mr. Soloway?

4 THE COURT: All right.

5 (Mr. Walker leaves courtroom.)

6 MR. SOLOWAY: Should we do this at the side bar,
7 Judge?

8 THE COURT: That's fine with me. We will take a
9 side bar, please.

10 (Side bar.)

11 THE COURT: Okay.

12 MR. SOLOWAY: Your Honor, I know that I just said I
13 am not going to call Kendale Robinson, but I feel over my best
14 judgment, that he's in the building, obviously, and my client
15 is -- he -- while he doesn't have the right to make me call
16 him, and I have the tactical ability to make a judgment not to
17 call him, I feel that under all the circumstances, based on
18 the last conversation I had with him, that it is his right to
19 have me call him, I guess I would say.

20 I apologize to the Court for --

21 THE COURT: There is no need for any apologies. My
22 only concern is that the lawyer that I appointed for him has
23 left.

24 MR. SOLOWAY: He was pretty completely allocuted by
25 the Court last week.

1 THE COURT: That's true.

2 MR. SOLOWAY: We haven't met with him since then.
3 Nothing has happened with him since then.

4 THE COURT: Anything?

5 You have a right, the defense has a right to call
6 whomever it wants to call.

7 MR. SOLOWAY: I understand.

8 THE COURT: Subject to the rules. I think I ought
9 to have the same conversation with him that I had with the
10 last witness. Although he is serving life without the
11 possibility of release. But then I don't know how --

12 MR. SOLOWAY: I have no objection to that.

13 THE COURT: How do we deal with the fact that he's
14 on appeal in the state courts? My position has been that's
15 his problem. It's not my problem.

16 MR. ARIAIL: If I can just interject?

17 I think the one concern that we have here is that
18 Mr. Soloway is making this decision in the best interest of
19 his client's case and not for some other reason. I think it
20 would be helpful to understand that.

21 MR. SOLOWAY: Well, I think I have put on the record
22 my view. I would also say that it is my tactical view that it
23 would be better for him not to call Kendale Robinson but it
24 could be my tactical view that it's better for him not to
25 testify as well. I know he has an absolute right to testify

1 so it is in a different category in that respect legally.

2 THE COURT: That is water under the bridge. Let's
3 talk about the future, not the past.

4 MR. SOLOWAY: My position is that I am going to call
5 him.

6 THE COURT: All right. I don't want to talk about
7 it anymore. We have talked about it a long time.

8 I am going to allow the government to go into as
9 much of the crime for which he was found guilty as we've
10 already discussed.

11 MS. PAUL: We've already discussed.

12 MR. NEUMAN: Just to clarify that scope, just to
13 make sure we are still on the same page about that.

14 My understanding is that the government can bring
15 out the fact that he was convicted, the title of the statute,
16 the conviction, the length of the sentence, and we had left
17 open, open issues last time, which does not affect the Fifth
18 Amendment but just affects opening the door, the two questions
19 I had.

20 The government had suggested they might want to ask
21 him about the elements of the crime. My position is that that
22 would exceed the scope of what's been permissible in other
23 cases. That's one question.

24 The second question is, if I elicit that he's
25 appealing that conviction, does that open the door? My

1 position is it does not. But if we get some guidance about
2 that before the direct so I know what the scope is.

3 THE COURT: What's the government's position?

4 MS. PAUL: With respect to the elements, we will not
5 go into the elements. We will question about the title, the
6 date, time and place of the crime.

7 THE COURT: And the appeal?

8 MS. PAUL: No.

9 THE COURT: If Mr. Neuman brings up the case is
10 being appealed?

11 MR. ARIAIL: To the extent that he suggests in any
12 way that he is innocent of the crime, then I think we would
13 have a full exploration of the details.

14 MR. NEUMAN: Agreed, agree with that. Just talk
15 about the fact, the mere fact I am appealing it without any
16 kind of denial about guilt?

17 THE COURT: And the fact that murder in the first
18 degree results in a sentence of life without the possibility
19 of parole, that will be brought out?

20 MR. NEUMAN: Yes.

21 MS. PAUL: Yes.

22 THE COURT: Okay.

23 MR. NEUMAN: The other matter, there is -- are we
24 done with that conviction?

25 MS. PAUL: I just have a question. You are

1 intending to elicit that he had -- he is taking it on appeal
2 at the moment. You are eliciting that. That's what you are
3 saying?

4 MR. NEUMAN: Yes.

5 MS. PAUL: Okay. In my view, that appears to be a
6 denial of his guilt of that crime. So I would ask that you
7 just not ask about that. If you do, that that opens the door
8 to us asking about the crime.

9 MR. NEUMAN: Last time I was here, I -- I cited one
10 case which I think I have a copy of. I don't have it in front
11 of me right at this moment. That the mention -- that
12 mentioned that issue. There are not a lot of cases on that.

13 THE COURT: I think that if he is appealing from a
14 conviction, it means he's taking the position that he was
15 erroneously found guilty of the crime, which means he didn't
16 do it, right? I understand that everyone appeals, even if
17 they know they did it. But the fact of the matter is, what
18 will be in the minds of the jurors. That's the question.

19 I think it would be unfair if the jury has the
20 impression by virtue of the answer that he will give to that
21 question if asked that he may believe that he is not guilty of
22 the crime. It is up to you. If you want to ask him the
23 question, you can ask him the question and open the door. If
24 you don't ask him the question, then it doesn't open the door.

25 MR. NEUMAN: I won't ask the question.

1 The other matter was he has a -- a conviction, I
2 don't remember the date, crack, misdemeanor.

3 MS. PAUL: I don't either. It's 2008 sometime.

4 MR. SOLOWAY: The crack sale?

5 MR. NEUMAN: Do you remember the date? We don't
6 have the rap sheet, I don't think.

7 MR. SOLOWAY: Oh. Yes, and that he doesn't want --

8 MS. PAUL: It is a misdemeanor. He does six months.

9 THE COURT: Is that coming up?

10 MS. PAUL: We initially requested that it come up
11 not as a prior conviction in that scope but in terms of
12 orienting the jury as to where he was during the time that he
13 was shot by Winfield.

14 THE COURT: I think it comes in.

15 MR. ARIAIL: Your Honor, I believe Mr. Neuman has
16 some case that may be on point. If we could have a minute, I
17 just respectfully would like a few minutes to look at the
18 case.

19 MR. NEUMAN: Okay.

20 MR. ARIAIL: And just given the way that this has
21 all come up, I think we are entitled to a little time to deal
22 with it and look at the issue.

23 THE COURT: That's fine with me. Come back and let
24 me know. That may change things or it may not change things.

25 I really need to get this moving. Every day is

1 another drama.

2 MS. PAUL: Adventure.

3 MR. SOLOWAY: Can we have him brought up, Your
4 Honor, Kendale Robinson, and put him on?

5 THE COURT: You want to put him on first?

6 MR. SOLOWAY: Yes.

7 THE COURT: Up and down.

8 MR. NEUMAN: We don't need his lawyer. We resolved
9 there is no Fifth Amendment issue.

10 I will get you the case.

11 Are we done?

12 THE COURT: I have the other guy here. I will bring
13 him up. I will bring him up.

14 (In open court.)

15 THE COURT: All right.

16 (Pause in proceedings.)

17 THE COURT: Side bar.

18 (Continued on next page.)

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1 (CONTINUING)

2 (Side-bar conference held on the record out of the
3 hearing of the jury.)

4 THE COURT: All right, yes, speak to me.

5 MR. NITZE: We've reviewed the case that Mr. Neuman
6 was referring to earlier, it's a case out of the Seventh
7 Circuit and I think that fastest way to say it is, in an
8 excess of caution, the Government's intention is even if
9 Mr. Neuman elicits the fact of the appeal, to just limit its
10 cross to the -- not as we discussed before, which is the title
11 of the conviction the fact that he's convicted by a jury and
12 the other matters that we've already discussed in the previous
13 side-bar.

14 THE COURT: That's fine.

15 MR. NEUMAN: Length of sentence.

16 MR. NITZE: Right.

17 Now if he goes into some factual detail on an
18 attempt to explain his innocence, that would be an entirely
19 different matter but my understanding from the proffer from
20 Mr. Neuman is they no have no intention of going down that
21 road. But as we've seen on more than one occasion, predicting
22 what is going to happen hasn't been a science in that case.

23 MR. NEUMAN: If I could have about ten seconds with
24 him to explain that aspect.

25 THE COURT: Ten seconds.

1 MR. NEUMAN: That's all I need.

2 THE COURT: Go ahead. He is up.

3 MR. NEUMAN: Okay.

4 (Side-bar end.)

5 (In open court.)

6 THE COURT: We have to wait for the lawyers.

7 (Pause in the proceedings.)

8 THE COURT: Mr. Gentile, I understand that the
9 Defense has changed its mind and is going to call
10 Mr. Robinson.

11 MR. GENTILE: Okay.

12 THE COURT: Is that right?

13 MR. SOLOWAY: Yes, Your Honor.

14 THE COURT: All right.

15 Is there anything further that you wish to discuss
16 with Mr. Robinson before we proceed?

17 MR. GENTILE: No, the only question I have for the
18 Court is, because of the discussions we had the other day
19 about the way the examination is going to go, do you want me
20 sit next to him or near him?

21 THE COURT: No. I don't think so. We've had a
22 discussion about the limits of the inquiry into the conviction
23 for first degree murder and I think the parties have reached
24 an understanding at side-bar about the limits that are going
25 to be placed on cross-examination under certain circumstances.

1 Is that a fair statement?

2 MR. NITZE: Yes, Your Honor.

3 MR. NEUMAN: Yes, Your Honor.

4 THE COURT: Now, do you think I ought to voir dire
5 your client about the risks of committing perjury?

6 MR. GENTILE: No, it's not so much that aspect of
7 it, Judge, that would be a concern; it's just monitoring, like
8 you said.

9 I can understand on cross-examination when you're
10 supposed to ask a question a certain way, perhaps you might
11 omit the magic word conviction and just slip into a factual
12 and he might not have the wherewithal to understand that
13 distinction, but the Court can monitor that without any
14 problem.

15 THE COURT: Also, I think the Defense has had a
16 conversation with the witness regarding the importance of
17 staying away from a discussion of the facts of that
18 prosecution underlying that prosecution.

19 Isn't that right?

20 MR. SOLOWAY: That's correct.

21 THE COURT: And so, you can monitor all you want,
22 but if it's out --

23 MR. GENTILE: I understand.

24 THE COURT: -- and the jury hears it, there is
25 nothing you can do, nothing I can do about it because the door

1 has been opened and there will be, possibly, some
2 cross-examination on the facts. But I will listen very
3 carefully.

4 Yes?

5 MR. ARIAIL: Your Honor, I just want to raise again
6 the issue that was brought up at side-bar, which is that
7 earlier in the proceedings Mr. Soloway way indicated that he
8 did not believe that it was in his clients's best interest for
9 this witness to testify. He then subsequently had a
10 conversation, came to side-bar and said that he intended to
11 call this witness to testify.

12 At this point, I think his position is that there is
13 some sort of right, duty, that he has to call this witness but
14 what I think is clear is right now we do not have a clear
15 understanding of what Mr. Soloway's position is with respect
16 to calling that witness in terms of whether or not he believes
17 it is in his client's best interest for this witness to
18 testify. And I think he needs to either make it clear that he
19 believes as a strategic matter, as an attorney representing
20 his client, that it's in his best interest for this witness to
21 testify or he should not call this witness.

22 I don't need anything about what the conversations
23 he was having with his client, but I want this record to
24 reflect that this is a strategic call or he shouldn't call
25 this witness.

1 THE COURT: And the reason why that question is
2 being asked is that, should there be a conviction in this case
3 and should there be an appeal and should there be possibly a
4 petition for writ of habeas corpus using a Strickland
5 argument, that the argument may be made by some other lawyer
6 that there was an ineffective assistance of Counsel.

7 And so, the question is, whether you can have it
8 both ways. I mean, in the end.

9 MR. SOLOWAY: I understand.

10 THE COURT: Let's make a record here as to whether
11 this is your strategic decision to call this witness or
12 whether it is not in the interest of your client, irrespective
13 of his views to call witness.

14 MR. ARIAIL: And whether he believes it's in the
15 best interest of his client to call the witness.

16 THE COURT: I understand. That is the question.
17 So, you're on.

18 MR. SOLOWAY: The answer is yes, it's in the best
19 interest. It's my judgment to do so and we are going to call
20 him on the basis of my best judgment, tactical and legal, and
21 we're ready to do that.

22 THE COURT: All right.

23 MR. ARIAIL: Thank you, Your Honor.

24 MR. GENTILE: Do you want me stay, though, Judge?

25 THE COURT: Please, stay.

1 MR. GENTILE: It might be a good idea.
 2 Do you want me to speak to him one last time, Judge?
 3 THE COURT: Yes, why don't do you that.
 4 MR. GENTILE: Okay, I'll take two minutes.
 5 THE COURT: All right.
 6 About how long is your direct for this witness,
 7 Mr. Neuman?
 8 MR. NEUMAN: Ten minutes.
 9 THE COURT: And the cross?
 10 MS. PAUL: Probably the same.
 11 THE COURT: All right.
 12 All set?
 13 MR. GENTILE: Yes.
 14 THE COURT: Are there any issues?
 15 MR. GENTILE: None, same situation.
 16 THE COURT: All right, thank you very much, sir.
 17 Let's call in the witness, please.
 18 (Witness enters and takes stand.)
 19 (Jury enters.)
 20 THE COURT: Please, remain standing, sir.
 21 Please, be seated.
 22 Good morning, Members of the Jury.
 23 THE JURY: Good morning.
 24 THE COURT: All right, the Defense may call its next
 25 witness.

1 MR. NEUMAN: The Defense calls Kendale Robinson.

2 THE COURTROOM DEPUTY: Sir, please raise your right
3 hand.

4 K E N D A L E R O B I N S O N ,

5 called by The Defense, having been
6 first duly sworn, was examined and testified
7 as follows:

8 THE COURTROOM DEPUTY: Please, have a seat.

9 Please, state and spell your full name for the
10 record.

11 THE WITNESS: Kendale Robinson -- K-E-N-D-A-L-E,
12 R-O-B-I-N-S-O-N.

13 THE COURT: You may enquire.

14 DIRECT EXAMINATION

15 BY MR. NEUMAN:

16 Q Good morning, Mr. Robinson.

17 A Good morning.

18 Q How old are you?

19 A I didn't hear.

20 Q How old are you?

21 A I'm 23.

22 Q And where did you grow up?

23 A In Brooklyn, downtown area.

24 Q Can you be more specific? What neighborhood it was?

25 A Wyckoff and Gowanus area.

1 Q Did you spend time in both Wyckoff and Gowanus?

2 A Yes.

3 Q Okay. And where are you residing right now?

4 A Great Meadows Correction Facility.

5 Q Is that because you've been convicted of a crime?

6 A Yes.

7 Q And what crime was that?

8 A Murder in the first.

9 Q And what was the sentence imposed for that crime?

10 A Life without parole, plus 15 years.

11 Q And are you presently appealing that conviction?

12 A Yes.

13 Q Do you know Ronald Herron?

14 A Yes.

15 Q Can you tell me how you met Mr. Herron?

16 A I met him, I met him, I actually met him at a basketball
17 tournament, I think.

18 Q Around what time was that?

19 A 2007 or '08, I can't really remember.

20 Q And can you describe the nature your relationship 2007,
21 2008, 2009?

22 A I mean, he, he was like, like, an older dude that was
23 actually annoying, he tried to keep telling everybody, tried
24 to keep telling me not to, you know what I'm saying, live the
25 life that I was living.

1 MS. PAUL: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q Without telling me what he said, I'm just trying to ask
4 you what your relationship was like.

5 A Our relationship was like a big brother little brother
6 relationship.

7 Q Okay. And you knew him you said in maybe 2007, 2008 is
8 when you met, you said?

9 A Yes.

10 Q And how long did that continue for?

11 A I mean --

12 MR. NEUMAN: Withdrawn, I'm sorry.

13 Q How often did you see him in 2008?

14 A I seen him like every two days and -- every two days.

15 Q How long did that continue?

16 A I mean, he used, I used to not see him only when he was
17 like, away rapping doing concerts or something. Other than
18 that, he was in the neighborhood every day.

19 Q And did Mr. Herron supply you with illegal drugs?

20 A No.

21 Q And as far as you know, was Mr. Herron involved in
22 selling drugs?

23 A To my knowledge, no.

24 Q Do you know someone named Vincent Winfield or Dip Set?

25 A Yes.

- 1 Q And how long have you known him?
- 2 A 2008.
- 3 Q And do you know any of his relatives?
- 4 A Yes.
- 5 Q Who?
- 6 A Somebody named EJ.
- 7 Q And who is EJ?
- 8 A Supposedly his godbrother.
- 9 Q Now, did there come a time that you were shot?
- 10 A Yes.
- 11 Q And when did that happen?
- 12 A September of 2008.
- 13 Q And how old were you at the time?
- 14 A I was 17.
- 15 Q Now, in the months leading up to that shooting, what was
- 16 your relationship with that guy named EJ or E, the godbrother?
- 17 A We had problems, we had problems with each other just
- 18 because where he was, like just the neighborhoods they had
- 19 problems with each other, his block and where I was hanging
- 20 out at.
- 21 Q Well, when you say problems --
- 22 A Yeah.
- 23 Q -- were these verbal disputes?
- 24 A Fighting disputes.
- 25 Q So, you had physical altercations with EJ?

1 A Yes.

2 Q And how many times do you think you fought with EJ?

3 A Several.

4 Q Well, you said several?

5 A Yes.

6 Q Would that be about five times?

7 A Be with about like, seven.

8 Q Seven times?

9 A Yeah.

10 Q And that was over what stretch of time? Is it over a
11 period of weeks, months?

12 A That was over a period of years.

13 Q And as you sit here now, can you tell me how that began?

14 A I mean, I actually don't know how it began. It's like
15 when I started hanging out in Wyckoff one day, we was going to
16 a school on Smith Street and we walked through Bond Street and
17 we saw EJ and the guys that he hang out with. We had an
18 argument, they was talking about, they was talking about the
19 last fight that they had, whatever. Then somebody swung and
20 we started to fight again. A lot of us.

21 Q And we're talking about the 2008 period of time?

22 A No, that happened in 2005.

23 Q Okay. And you said you were shot in 2008, though; right?

24 A Yes.

25 Q And how old were you at that time when you were shot?

1 A Seventeen.

2 Q Seventeen. Now, did there come a time that your dispute
3 with EJ involved Vincent Winfield?

4 A Yes.

5 Q And did that ever become physical with Vincent Winfield?

6 A Yes.

7 Q Can you tell me about that?

8 A Yes, we was in a club, called Rockwell's and EJ was there
9 with Winfield. I think, I think he was, I think he was
10 dancing with somebody's girl or somebody, and we had some
11 words.

12 Q Let me just stop you for a second. Who was dancing with
13 someone's girl?

14 A EJ.

15 Q Okay. Go ahead.

16 A EJ was dancing with somebody's girl. We had some words
17 or whatever. Then Dip Set said something. I didn't know who
18 he was at the time, he started talking, and me and him started
19 arguing, so I hit him and everybody started fighting.

20 Q Who did you hit?

21 A Winfield.

22 Q Do you remember exactly how you hit him?

23 A I punched him in the face.

24 Q You punched him hard?

25 A Yes. As hard as I could.

1 Q As hard as you could?

2 A Yes.

3 Q Could you tell whether you hurt him?

4 A I mean, there was blood.

5 Q How much time passed after that fight with Winfield
6 before you were shot?

7 A A day or two.

8 Q A day or two?

9 A Yes.

10 Q And at the time that you were shot, what was your
11 relationship with Mr. Herron?

12 A Same as it always been, it was cool.

13 Q What is your understanding for the reason that Vincent
14 Winfield shot you?

15 MS. PAUL: Objection.

16 THE COURT: Sustained.

17 Q After you were shot, did you speak to the police?

18 A No.

19 Q Did they try to speak to you?

20 A Yes.

21 Q And you were not cooperative?

22 A No.

23 Q No, meaning you are agreeing that you were not
24 cooperative, is that what you mean?

25 A Yes.

1 MR. NEUMAN: Your Honor, one moment, please.

2 THE COURT: Yes.

3 (Pause in the proceedings.)

4 Q As far as you know, did Ronald Herron have anything to do
5 with you getting shot in September?

6 MS. PAUL: Objection.

7 THE COURT: Sustained.

8 Q Can you recall, can you describe when you were being --
9 the shooting incident? In other words, who was there and
10 other details?

11 A You want me to explain exactly how it happened?

12 Q Best of your memory, yes.

13 A All right. I was it was a hot day. I was walking into
14 185 Nevins. Somebody, somebody was rapping or something. We
15 stood around and it was a couple of people. I stood around
16 and watched or whatever. Then, somebody -- everybody started
17 like walking off like something's about to happen. So, I
18 turned around and I saw Dip Set. He had on a black hoodie, I
19 think. I saw him, he pulled out a gun and whatever. He said
20 yo, what up now, you thought you was tough in the club. Then
21 he was like yo, run your pockets, he tried to rob me.

22 MS. PAUL: Objection, Your Honor.

23 THE COURT: Sustained.

24 THE WITNESS: Continue?

25 THE COURT: No.

1 Q Who was present when you were shot?

2 A I mean, I really don't know because I wasn't with
3 anybody. The only person -- I was with Dip Set.

4 MR. NEUMAN: One moment, Your Honor.

5 Q Well, after you saw Winfield, what happened?

6 A With the shooting?

7 Q Yes.

8 A We had some words. He tried to rob me. When he got
9 closer to me, I went for the gun. We touselled over the gun and
10 a shot went off. I ran in the building he chased behind me
11 shooting. He shot me twice. I ran out the back. I fell, got
12 back up and I was running down the stairs. He shot again and
13 hit me. I fell again, got back up. I hid. I ran on Nevins
14 Street, police pulled me over. I told them I was shot, they
15 still asked me for a gun, and searched me, and I told them I
16 was shot, I didn't have nothing on me, they searched me and
17 kicked me to the floor, told me to lay down there until the
18 ambulance got there.

19 MR. NEUMAN: No further questions.

20 THE COURT: Cross-examination.

21 MS. PAUL: Thank you, Judge.

22 CROSS EXAMINATION

23 BY MS. PAUL:

24 Q Good morning, Mr. Robinson.

25 A Morning.

1 Q My name is Rena Paul. I'm an Assistant U.S. Attorney
2 here in Brooklyn and I would like to ask you a couple of
3 questions.

4 A All right.

5 Q So, you told us here just this morning that you were, in
6 fact, shot by Vincent Winfield; is that right?

7 A Yes.

8 Q And that happened on September 13th, 2008; isn't that
9 right?

10 A I'm not sure exactly what day, but it was September of
11 2008.

12 Q In September. And in September of 2008 and in and around
13 that period, you were selling drugs; right?

14 A In -- yes.

15 Q Yes, you were selling drugs.

16 You were selling crack cocaine; right?

17 A Yes.

18 Q And you were selling in Wyckoff; is that right?

19 A Yes.

20 Q In the Wyckoff Housing Development; right?

21 A Yes.

22 Q And, in fact, you were convicted of selling crack cocaine
23 on September 1st of 2008; right?

24 A I'm not sure exactly when, but yes, I was convicted in
25 2008 for a crack charge.

1 Q And that was because you sold drugs to an undercover
2 officer one time; right?

3 A No. I sold drugs to a crackhead, but he had marked
4 money. He got money from an undercover officer.

5 Q Okay. And that happened at the corner of Third Avenue
6 and Warren Street; sound about right?

7 A Yes.

8 Q And you told us that you got shot by Vincent Winfield a
9 couple of times; right? Two times?

10 A Yes.

11 Q And you told us just a moment ago about how that went
12 down, something about tousling for the gun and running out;
13 right?

14 A Yes.

15 Q He's running after you.

16 Do you remember a time during that altercation, as
17 you describe it, where he put the gun in the back of your neck
18 and pulled the trigger?

19 A No.

20 Q And there are other people around, you said, at the time;
21 right?

22 A Yes.

23 Q Moose was around; right?

24 A I didn't see him.

25 Q How about D-Wild, you see him?

- 1 A No.
- 2 Q But you know D-Wild?
- 3 A I know who he is.
- 4 Q You know Moose?
- 5 A Yes.
- 6 Q Jorge Mejia?
- 7 A I don't know his real name, I know him as Moose.
- 8 Q And you know Manny; right?
- 9 A Manny, no, I don't think I know who that is.
- 10 Q You don't know Manny?
- 11 A I'm not sure. I don't recall somebody named Manny right
12 now.
- 13 Q Okay. And you told us that that shooting happened after
14 you had a dispute with EJ; right?
- 15 A Yes.
- 16 Q And that was Vincent Winfield's godbrother; isn't that
17 true?
- 18 A Yes.
- 19 Q And you told us around that time, when that happened,
20 that the defendant Ronald Herron was in the neighborhood all
21 the time; right?
- 22 A Yes.
- 23 Q That sometimes he was rapping, according to you, but he
24 was in the neighborhood all the time; right?
- 25 A Yes.

1 Q And you said that this beef with EJ began over a dispute
2 between people in your, I think you said, block where you were
3 hanging out and his block; right?

4 A Yes.

5 Q When you're saying that, you're referring to your block
6 being Wyckoff; right?

7 A Yes.

8 Q And his block being Gowanus; right?

9 A Bond Street, only that part.

10 Q Because Bond Street's in Gowanus?

11 A Yes.

12 Q 198 Bond Street is in Gowanus?

13 A Yes.

14 Q And that was what that dispute was about; right?

15 A Yes.

16 Q And Ronald Herron is from Gowanus; right?

17 A Yes.

18 Q Now you told us that part of this altercation happened at
19 a club, but we can agree it was over someone's girl; right?

20 A Yes.

21 Q It was over your girl; right?

22 A No.

23 Q It was over someone else's girl?

24 A Yes.

25 Q That's your testimony?

1 A Yes.

2 Q Are you familiar with the term chuck? Do you know what
3 that means?

4 A That's a name, right?

5 Q Chucking you. What does that mean?

6 A Oh, pistol-whip.

7 Q And you told us that the police came after you got shot
8 by Vincent Winfield; right?

9 A Yes.

10 Q And this happened at 185 Nevins Street, just so we're
11 clear?

12 A Yes.

13 Q And that's Wyckoff?

14 A Yes.

15 Q That was your project where you were selling drugs?

16 A Yes.

17 Q And you told us that the police came; correct?

18 A Yes.

19 Q And in your view, what happened is, is that they kicked
20 you to the floor; right?

21 A Yes.

22 Q Then they called the ambulance to help you; right?

23 A I would assume so.

24 Q You would assume so. Did the ambulance come?

25 A Yeah, they came.

1 Q And you went to the hospital. So, after they were done
2 kicking you and throwing you on the floor, they called the
3 ambulance --

4 MR. NEUMAN: Objection.

5 Q -- to pick you up?

6 THE COURT: Sustained.

7 Q And you told us today that you know exactly what happened
8 to you in September of 2008 when you got shot; right?

9 MR. NEUMAN: Objection.

10 THE COURT: Overruled.

11 You may answer.

12 Q You knew exactly what happened to you in 2008 September
13 when you got shot; right?

14 A Yes.

15 Q You knew when the police asked you who shot you right?

16 A Yes.

17 Q But you didn't tell them at the time?

18 A No.

19 Q Right?

20 A No.

21 Q You didn't tell them?

22 A No.

23 Q You didn't want to be a snitch; right?

24 A No, because he was being a jerk, that's why.

25 Q They came to you on more than one occasion; isn't that

1 true?

2 A No.

3 Q They didn't?

4 A Inside the hospital after I got out of surgery, that's
5 it.

6 Q Your testimony is that you talked to the police one time?

7 A Like, be specific. Like, was it just for that occasion
8 for that specific reason?

9 Q If you don't understand my question --

10 A No, I don't.

11 Q -- I'll ask a different question.

12 THE COURT: Sustained.

13 MR. NEUMAN: The witness has got to be allowed to
14 finish.

15 THE COURT: Excuse me.

16 MS. PAUL: I'll try to make it clearer, Judge.

17 THE COURT: It's been withdrawn, so it doesn't
18 require an answer.

19 Go ahead.

20 Q When you got shot you were interviewed by police; is that
21 true?

22 A Like during?

23 Q Right there, when they came and kicked you on the ground,
24 picked you up and put you in the ambulance, they interviewed
25 you?

1 A They said which way did he run, that was the only
2 question besides did I have a gun on me.

3 Q And you told them; right?

4 A No.

5 Q You said he went that way?

6 A No.

7 Q No.

8 A I mean, I really don't know because I had passed out for
9 a second, I don't know.

10 Q Right. You didn't tell them?

11 A I do not remember.

12 Q Now you don't remember?

13 A I don't want to give an answer that I'm not sure of, so.

14 Q I wouldn't want you to do that either, I just want you to
15 answer my questions yes or no or if you don't understand, let
16 me know. Okay?

17 A All right.

18 MR. NEUMAN: Objection.

19 THE COURT: Sustained.

20 Next.

21 Q All right. So, after you went to the hospital, the
22 police interviewed you after that; right?

23 A Yes.

24 Q More than once; right?

25 A I don't recall.

1 Q All right. Do you recall anyone going to your mother's
2 house and hearing from your mother that they were there
3 looking for you?

4 MR. NEUMAN: Objection.

5 THE COURT: Overruled.

6 You may answer.

7 A No.

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9 (Continued on following page.)

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1 BY MS. PAUL:

2 Q You don't remember that?

3 A It didn't happen.

4 Q It didn't happen?

5 A Yes.

6 Q It's fair to say you did not cooperate with the police?

7 A Yes.

8 Q And you know a person by the name of China?

9 A Right. Yes.

10 Q She lived in 185 Nevins Street; right?

11 A Yes.

12 Q You know her baby's father, his name is Greezy; right?

13 A Yes.

14 Q Acquaintances, and you hung out in her apartment at
15 times; right?

16 A No.

17 Q She had some kids in that apartment?

18 A Yes, she had some kids.

19 Q Been in that apartment?

20 A Yes.

21 Q And you know that in 2008, when you got shot by Winfield,
22 that Winfield was working for Ronald Herron; isn't that true?

23 A Working for him? I don't know.

24 Q He was with him; right?

25 A Yeah. They was in the same set.

1 Q The same set of the Bloods?

2 A Yes.

3 Q And Crystal was with him, too; right?

4 A Yes.

5 Q You told us that you're serving a life sentence
6 currently, at the age of twenty-three; right?

7 A Yes.

8 Q And that is because you yourself were convicted of
9 murder?

10 A Yes.

11 Q Yes?

12 A Yes.

13 Q You smiled?

14 MR. NEUMAN: Objection.

15 MS. PAUL: I'll ask a different question, Judge.

16 THE COURT: All right.

17 Q You were convicted of murder in the first degree?

18 A Yes.

19 MR. NEUMAN: Objection.

20 Q You were convicted of murder in the first degree?

21 A Yes.

22 Q And that was the murder of a witness; right? You were
23 convicted of murdering a witness?

24 MR. NEUMAN: Objection.

25 THE COURT: Overruled.

1 A Yes.

2 Q And the murder that you were convicted of, the murder of
3 a witness that you were convicted of, that murder took place
4 on May 26, 2010; right; that's what you were convicted of?

5 A Yes.

6 Q And you were convicted of committing that murder of a
7 witness at about 10:00 o'clock at night?

8 MR. NEUMAN: Objection.

9 THE COURT: Sidebar.

10 (Continued on next page.)
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1 (Sidebar.)

2 THE COURT: What opened the door to that question?

3 MS. PAUL: I don't think anything opened the door.
4 I thought we were doing date, time and location.

5 MR. NEUMAN: You also brought out, you were getting
6 into the facts, Did you murder a witness?, which is different
7 than the title of the conviction.

8 MS. PAUL: The title of the conviction is murdering
9 a witness.

10 MR. NEUMAN: You're asking about that, and you're
11 asking about the date and time of the actual event, not the
12 date of the conviction.

13 MS. PAUL: My position is that we should be
14 permitted to elicit the date, time and place of the incident.

15 MR. NEUMAN: That's not what we discussed before.

16 MS. PAUL: Then I misunderstood what we discussed
17 before.

18 THE COURT: Well, it's already in, so it is what it
19 is.

20 MS. PAUL: All right.

21 THE COURT: If I sustain the objection, then it
22 appears that it's erroneous. I'm not doing that, either.
23 We're stuck with what we've got here.

24 MS. PAUL: I'll move along.

25 (Continued on next page.)

1 (In open court.)

2 MS. PAUL: Judge, I'm going to withdraw the last
3 question.

4 BY MS. PAUL:

5 Q I want to ask you, Mr. Robinson, in 2010, May, you knew
6 the defendant; right?

7 A Yes.

8 Q Still knew him. And your phone number at that time was
9 347-262-4276; does that sound right?

10 A Yes.

11 Q And you communicated with Ronald Herron at that time;
12 right?

13 A Yes.

14 Q Had a relationship with him, some kind?

15 A Yes.

16 Q And you knew that he -- you've told us -- was a rapper?

17 A Yes.

18 Q And a Blood; Right, a Blood?

19 A Yes.

20 Q A Murderous Mad Dawg Blood?

21 A Yes.

22 Q You were aware, were you not, that he had a Twitter
23 account at that time?

24 A No. I don't have Twitter, so I don't be on Twitter.

25 Q You know what Twitter is; right?

1 A Yes.

2 Q Are you aware that in May of 2010, there was some
3 articles written about the crime for the case that you got
4 convicted of?

5 MR. NEUMAN: Objection.

6 A Answer?

7 THE COURT: Sustained.

8 Q You yourself are a Blood; right?

9 A Yes.

10 Q Yes. What set of the Blood are you?

11 A L Gang.

12 Q L Gang?

13 A Yes.

14 Q That's a different set; right?

15 A Yes.

16 Q But Bloods are all under -- even different sets are all
17 sort of under the same umbrella; right?

18 A Supposed to be.

19 Q They are all Bloods, and the Bloods is a gang?

20 A Yes.

21 Q Right?

22 A Yes.

23 Q It's a gang on the street; right?

24 A Yes.

25 Q It's a gang in jail?

1 A Gang everywhere.

2 Q Gangs everywhere. And like other gangs, it has leaders;
3 isn't that true?

4 MR. NEUMAN: Objection.

5 THE COURT: Sustained.

6 A Answer?

7 THE COURT: No. If I sustain an objection, you
8 don't have to answer.

9 THE WITNESS: All right.

10 Q Does the Bloods have a hierarchy? Do you understand what
11 I mean?

12 A I don't understand what you mean.

13 Q Are some people higher up in the Bloods and some people
14 lower down in the Bloods?

15 A Yes.

16 Q There's like levels; right?

17 A Yes.

18 Q And being in jail, being in a gang can protect you;
19 right?

20 A I didn't hear you.

21 Q Being in jail, being in a gang in jail could offer you
22 some protection; right?

23 A Yes.

24 Q It could offer you some security in jail?

25 A Yes.

1 Q Allow you to be part of a group; right?

2 A You mean you already a part of them?

3 Q Yes. In jail; right?

4 A Yes.

5 Q People will look out for you in jail?

6 A Yes.

7 Q And Ronald Herron is a big homey; right?

8 A Yes.

9 Q You laughed. Tell us what that means to you.

10 A No. That's what he calls his self in his raps.

11 Q That's what he calls himself in his raps?

12 A Yes.

13 Q Is it your testimony that the big homeys have nothing to
14 do with the Bloods organization?

15 MR. NEUMAN: Objection.

16 THE COURT: Overruled.

17 You may answer.

18 A Repeat that.

19 Q Is it your testimony that "big homey" is just a rap term?

20 A I mean -- I mean, it's -- people consider a position in
21 Blood a big homey.

22 Q So, it's a position in the gang?

23 A It's a nickname for a position.

24 Q What position?

25 A Somewhere on the lineup.

1 Q I'm sorry?

2 A I mean, it's like somewhere -- it's somewhere high.

3 Q Somewhere high, you said, on the lineup; right?

4 A Yes.

5 Q High up on the lineup?

6 A Yes.

7 Q Yes, that's what the defendant is?

8 A I don't know what he is. I'm not in his set. I would
9 have to be in his set to actually know for sure.

10 Q Is that really true?

11 MR. NEUMAN: Objection.

12 THE COURT: Sustained.

13 Q Don't you receive literature as a Blood member; right?

14 A Yes.

15 Q You received literature to learn about other sets in the
16 Bloods?

17 A Other sets, no.

18 Q Okay. It's your testimony, as you sit here today under
19 oath, that you don't know whether or not Ronald Herron is a
20 big homey of the Murderous Mad Dawg Bloods?

21 MR. NEUMAN: Objection.

22 THE COURT: Overruled.

23 You may answer.

24 A I know he referred to himself as that. As far as me
25 knowing, no, I don't know what exactly position he has.

1 Q You are testifying under today; right?

2 MR. NEUMAN: Objection.

3 THE COURT: Overruled.

4 A Yes.

5 Q You took an oath earlier before this jury and you swore
6 to tell the truth?

7 A Yes.

8 Q Yes. But you don't have any respect for this process?

9 MR. NEUMAN: Objection.

10 THE COURT: Sustained.

11 Q A jury, just like this jury, convicted you, and that
12 conviction was for murder of a witness; right?

13 A Yes.

14 Q You're going to be in jail for the rest of your life;
15 isn't that true?

16 A I answer that?

17 I don't know.

18 Q You received a sentence of life -- what did you say, life
19 without the possibility of parole plus fifteen years?

20 A Yes.

21 Q If you lie under oath today in front of this jury, you
22 know that you could be convicted of a crime called perjury;
23 right?

24 A Yes.

25 Q Perjury might come with additional jail sentences that

1 you could serve?

2 A Yes.

3 Q And you're doing a life sentence; right?

4 A Yes.

5 Q How much additional time would a perjury conviction add
6 to your sentence?

7 A I don't know.

8 MS. PAUL: I have no further questions.

9 THE COURT: Redirect?

10 MR. NEUMAN: One moment, your Honor.

11 (Pause.)

12 MR. NEUMAN: No further questions.

13 THE COURT: We'll take a brief recess.

14 All rise for the jury.

15 (Jury excused.)

16 THE COURT: Please be seated.

17 (Pause.)

18 THE COURT: You may stand down.

19 (Witness excused.)

20 THE COURT: About how long will it take to bring the
21 next witness up?

22 THE MARSHAL: Right now. We're going to bring him
23 right up.

24 THE COURT: We'll just wait.

25 (Pause.)

1 THE COURT: About how long is the next witness?

2 MR. SOLOWAY: Fifteen minutes on direct, if that.

3 MR. SOLOWAY: We're going to rest after this
4 witness, but we have a few stipulations that we're going to
5 read in.

6 THE COURT: All right.

7 (Pause.)

8 (In open court; jury not present.)

9 THE COURT: All right. Let's have the witness come
10 in, please.

11 (Pause.)

12 (Jury present.)

13 THE COURT: Please be seated.

14 Would the defense call its next witness.

15 MR. SOLOWAY: The defense will call Shondell Walker,
16 your Honor.

17 S H O N D E L L W A L K E R,

18 having been duly sworn, was examined and

19 testified as follows:

20 THE CLERK: State your name for the record.

21 THE WITNESS: Shondell Walker.

22 THE CLERK: Spell your last name.

23 THE WITNESS: W A L K E R.

24

25 THE COURT: You may inquire.

1 MR. SOLOWAY: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. SOLOWAY:

4 Q Good morning, Mr. Walker.

5 A Good morning.

6 Q Mr. Walker, where are you living now?

7 A I'm living in Manhattan right now.

8 Q And where?

9 A Amsterdam, 1945 Amsterdam.

10 Q Are you actually living at that place now, or is that
11 just your address?

12 A That's just my address.

13 Q How about where you are residing currently?

14 A Gowanus Projects, Gowanus Houses.

15 Q You are wearing certain kinds of clothing; does that come
16 from somewhere?

17 A Yes, MDC Brooklyn.

18 Q Is that where you are living right now?

19 A Yes.

20 Q Why?

21 A Why?

22 Q Yes. Why are you living at MDC?

23 A I'm incarcerated.

24 Q Why?

25 A For allegedly -- for drugs.

1 Q How old are you?

2 A I'm twenty-nine.

3 Q So, what year were you born?

4 A 1985.

5 Q Now, you said that you're currently incarcerated for
6 something to do with drugs; right?

7 A Yes.

8 Q And what's the status of the drug case that you refer to
9 right now?

10 A I don't understand.

11 Q What stage of the case is your case at? What's happened
12 in your case since the time when you were arrested until now?

13 A I mean, I pled guilty.

14 Q When was that?

15 A October 6, 2011.

16 Q And have you been sentenced yet?

17 A No.

18 Q When were you arrested?

19 A I was arrested October 5, 2010.

20 Q Do you have any other convictions specifically in 2003?

21 A Yes, robbery in the third.

22 Q Tell us about that.

23 A I mean -- what you mean?

24 Q What happened?

25 A I took a chain. I snatched somebody's chain.

1 Q Where were you?

2 A I was on the corner of Hoyt Street.

3 Q Why did you do that?

4 A No justification, just young, dumb. I did it. I thought
5 it was cool.

6 Q Did you do that with a weapon or not?

7 A No weapon.

8 Q Do you have a nickname on the street?

9 A Yes.

10 Q What is it?

11 A M Dot.

12 Q Do you know Ronald Herron?

13 A Yes.

14 Q Do you see him in the courtroom today?

15 A Yes.

16 Q Can you point him out by just identifying an article of
17 clothing he's wearing?

18 A He's wearing sky blue, with glasses on.

19 THE COURT: Let the record indicate that the witness
20 has identified the defendant.

21 Q Now, you said you were arrested in October of 2010;
22 right?

23 A Yes.

24 Q For the case you are locked up on now?

25 Were you at liberty on the street during the period

1 2007 to October 2010, when you were arrested?

2 A Was I what?

3 Q Were you free, were you on the street?

4 A I mean, back and forth. I was going back and forth to
5 jail for parole violations.

6 Q Okay. Tell us about that.

7 A I was smoking weed and violating curfew and things like
8 that, going back and forth.

9 Q Were you on some kind of supervision?

10 A Yes.

11 Q What kind of supervision was that?

12 A Parole, state.

13 Q What case were you on parole for?

14 A The robbery in the third.

15 Q That was from 2003?

16 A Yes.

17 Q Are you a member of the Bloods?

18 A Yes.

19 Q And what set are you in?

20 A I'm a Mad Dawg.

21 Q How long have you been a Mad Dawg?

22 A 2005.

23 Q Where did you join?

24 A In jail.

25 Q Why are you, if for any reason, a member of the Mad

1 Dawgs?

2 A I just was a follower. It was like a fashion. I just
3 wanted to be a part of it.

4 Q Are the Mad Dawgs located in any particular area of
5 Brooklyn?

6 A Gowanus.

7 Q And so, if you are a Blood and you are from Gowanus, can
8 you become a Mad Dawg?

9 A No.

10 Q You can become other sets, too?

11 A Absolutely.

12 Q You said that you've been a member of the Bloods and a
13 member of the Mad Dawgs since 2005; right?

14 A Yes.

15 Q And during that time, have you ever been told or ordered
16 to commit crimes by the Bloods?

17 A Absolutely not.

18 Q Why did you commit the crimes that you committed in your
19 life?

20 A I only committed one crime.

21 Q You said you had a robbery and you pled guilty --

22 A I pled guilty to drugs. I tell you, the robbery, I was
23 just young and dumb. I sold drugs so I could support myself.

24 Q When you joined the Bloods, was there any kind of ritual
25 that you went through?

1 A Absolutely not.

2 Q Any kinds of initiation of any sort?

3 A No.

4 Q How did it happen?

5 A I just told the person that I want to be joining, and he
6 told me I'm in.

7 Q Who was that?

8 A Mario Jones, a guy incarcerated.

9 Q Has anyone ordered you to come in here today and testify?

10 A What you mean "ordered," like made me?

11 Q Has anybody given you an order to come and testify?

12 MR. ARIAIL: Objection.

13 A No.

14 MR. ARIAIL: Objection, your Honor.

15 THE COURT: Sustained.

16 Q Now, in the periods from around 2008 until the time you
17 were arrested on your current case, do you go to any bars or
18 clubs or things like that?

19 A Yes.

20 Q Which ones?

21 A Perks.

22 Q And is that a place where Mr. Herron goes?

23 A Yes.

24 Q And do you see him there sometimes?

25 A Yes.

1 Q How often?

2 A Three days, four days.

3 Q Per week, per month, per year?

4 A Per week.

5 Q You know where Perks is; right?

6 A Yes.

7 Q Where is it?

8 A Smith Street.

9 Q Smith Street?

10 MR. SOLOWAY: Judge, I'm going to put on the Elmo
11 something that's already in evidence and marked Government's
12 Exhibit 2. It's an aerial map.

13 THE COURT: Do you see it on there?

14 THE WITNESS: Yes.

15 THE COURT: It's on all the screens, but the
16 projector is still warming up. Is it also on the screens in
17 the gallery? It's on the screens in the gallery, as well.
18 So, everyone has it.

19 Go ahead.

20 BY MR. SOLOWAY:

21 Q Do you recognize what's shown on your screen there,
22 Mr. Walker?

23 A Yes.

24 Q And what, generally speaking, is it?

25 A What?

1 Q What just, generally speaking, do you recognize it to be?

2 A Some streets, like my area.

3 Q In your area?

4 A Yes, Southside Brooklyn, where I'm from.

5 Q Can you see on that map, Government's Exhibit 2, where
6 Perks is located? Take a minute and look around there on the
7 map and tell us where Perks, the club you referred to, is
8 located.

9 A Well, it doesn't have Smith Street on here.

10 Q Look at the upper left-hand corner of the screen. Take
11 your time. I'm going to point to something here.

12 A All right.

13 Q Okay?

14 A Yes.

15 Q Do you know where Perks is located?

16 A Yes.

17 Q Where?

18 A Right here, top-left side.

19 Q Okay. So, it's -- is it actually on Smith Street?

20 A Yes, it's on Smith Street.

21 Q And somewhere in the area you pointed, it looks like
22 around Wyckoff Street, around Warren Street, those cross
23 streets?

24 A I mean, I know it's Smith street and it's a Citibank and
25 a Rite Aid across the street. I'm not sure in between, if

1 it's Smith and something else. I just know Smith Street.

2 Q Smith Street but you are not exactly sure of the cross
3 streets?

4 A No.

5 Q But it's somewhere around the area where you've indicated
6 with that arrow, to the best of your recollection?

7 A Yes.

8 Q And that, for the record, is somewhere around Smith and
9 Wyckoff?

10 When you would go to Perks, was Ronald Herron
11 someone who was known there.

12 A Yes.

13 Q What would happen when he was there, if anything?

14 A They would show him love and play his music.

15 Q Now, based on what you were able to observe, was Ronald
16 Herron generally someone that people wanted to be around?

17 A Yes.

18 MR. ARIAIL: Objection.

19 THE COURT: Sustained.

20 Q Did you want to be around him?

21 A Yes.

22 Q Why?

23 A He's a positive role model.

24 Q From the place -- you said you grew up in Gowanus; right?

25 A Yes.

1 Q And the place that you grew up, have there been any
2 famous entertainers or athletes who come out of the Gowanus
3 Projects?

4 A Never.

5 Q Now, do you know someone by the name of Crystal Lewis?

6 A Yes.

7 Q Is she some friend of yours in some way?

8 A Yes.

9 Q During the period when you've been describing, 2008 to
10 2010, what are the kinds of things that you saw Crystal Lewis
11 doing?

12 A Nothing, really; smoke weed, chill around the projects.

13 Q Has there ever come a time that you tell -- when you say
14 the "projects," do you mean Gowanus?

15 A Yes.

16 Q Has there ever come a time that you tell Crystal Lewis to
17 stop selling drugs at 423 Baltic Street on the orders of
18 Ronald Herron?

19 A Never.

20 Q Did you ever work for Mr. Herron?

21 A Never.

22 Q Did you sell drugs for him?

23 A No.

24 Q Did you ever carry firearms for him?

25 A No.

1 Q Now, when you were around Gowanus, did you see Ronald
2 Herron around there, too?

3 A Sometimes.

4 Q What were the things that you saw him doing?

5 A Shooting videos, playing basketball, working out.

6 Q Have you ever owned a firearm?

7 A Never.

8 Q Have you ever fired a firearm?

9 A Yes.

10 Q Tell us about that, when you did that, and what were the
11 circumstances?

12 A Probably fourteen years old, me and a couple of friends
13 went on the roof and shot in the air.

14 Q When would you say that was?

15 A Probably around when I was fourteen years old, thirteen,
16 fourteen, something like that.

17 Q During the period from 2008, 2010 or thereabouts, did you
18 ever see Ronald Herron involved in any narcotics activity?

19 A Negative.

20 Q When you say "negative"?

21 A No.

22 Q And were you friends with Ronald Herron?

23 A Yes.

24 Q Now, you said that there comes a time that you get
25 arrested. Why don't you tell us about the night or day,

1 whatever it was, that you get arrested? What happened?

2 A We arrived at the club, Club Amnesia.

3 Q Who is "we"?

4 A Me, Caraballo and Herron.

5 Q Let me back up. Before that?

6 A Yes.

7 Q Earlier in the night?

8 A Yes.

9 Q How does it come about that you are at the club?

10 A All right.

11 Q Why don't you go back to earlier in the day?

12 A It was rappers release parties, and we were going to
13 support him that night. So, Caraballo called me and told me
14 that we going to support Waka, the rapper, for the Club
15 Amnesia party. So, he picks me up, and me and Caraballo alone
16 drives to the studio.

17 (Continued on next page.)

18

19

20

21

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25

1 EXAMINATION CONTINUES

2 BY MR. SOLOWAY:

3 Q Where is the studio, if you remember?

4 A The studio is on 30th between Seventh and Eighth.

5 Q Is that a place that you have been before?

6 A Yes.

7 Q What kinds of things go on at that studio?

8 A Music.

9 Q Who is making music at that studio, as far as you
10 observed?

11 A Herron.

12 Q Anybody else in?

13 A Yes; Uncle Murda, Waka Flocka.

14 Q You said that you went there sometime on the night that
15 you were arrested together with this guy Caraballo?

16 A Yes.

17 Q Do you know him, Caraballo, by any other name?

18 A Yes.

19 Q What's that?

20 A Henny.

21 Q So what happens at the studio?

22 A We stay at the studio for a little while.

23 Q Who is we?

24 A Me and Caraballo, we was waiting. Herron wasn't there
25 yet. Then he came. We all left to go to club, the club.

1 Q When you left to go to the club, who left with you?

2 A Me, Caraballo, Herron, Uncle Murda and another guy.

3 Q Do you all go in the same car or do you go in separate
4 cars?

5 A Yes, we went in the same car.

6 Q Who went in the car that you went in?

7 A Herron, Caraballo, Uncle Murda and the other guy.

8 Q You are saying that Uncle Murda was in car with you and
9 Caraballo and Herron?

10 A Yes. They just got let out before us.

11 Q He what?

12 A He got let out the car before us, before we parked.

13 Q In this car, tell us where people are seated.

14 A Caraballo is driving. Herron is in the passenger side.
15 I'm in the back seat.

16 Q And as best you can remember, the car goes from where to
17 where in terms of the studio to this club?

18 A It goes from the studio to the Club Amnesia.

19 Q Do you know where Club Amnesia was, how long it took to
20 you get there, how far it was?

21 A Probably 20 minutes.

22 Q Before you go to the club or before you go to the studio,
23 are you asked by Mr. Herron to bring a gun with you?

24 A Never.

25

1 MR. ARIAIL: Objection.

2 THE COURT: Sustained.

3 MR. SOLOWAY: Can we approach, Your Honor?

4 THE COURT: All right. Side bar.

5 (Side bar.)

6 THE COURT: Yes, sir?

7 MR. SOLOWAY: Your Honor, I really can't imagine how
8 this could be hearsay or anything of that sort because
9 testimony was -- from Henny that Henny, Hi Henny Caraballo,
10 that he was directed to pick up a gun that M-Dot or that --
11 was going to have. He called it the blickey, I went to get
12 M-Dot and the blickey. And when I picked up M-Dot, M-Dot had
13 the gun and I believe it was Henny's testimony that he had
14 directed M-Dot to have this gun and to bring it with him.

15 So he -- he should be allowed to answer that
16 question as to whether he was asked by Herron to bring a gun,
17 to bring the blickey or any other word that he would use for
18 it.

19 MR. ARIAIL: It seemed like he was about to elicit a
20 conversation of some sort. I assumed it was hearsay.

21 THE COURT: All right.

22 MR. ARIAIL: If he just asks the one question.

23 THE COURT: That's fine. Withdraw your objection.

24 MR. ARIAIL: Yes.

25

1 (In open court.)

2 MR. ARIAIL: Your Honor, we withdraw our objection.

3 THE COURT: All right. You may ask your question
4 again.

5 EXAMINATION CONTINUES

6 BY MR. SOLOWAY:

7 Q Before you went to the studio with Mr. Caraballo, were
8 you asked by Mr. Herron to bring a gun with you to the studio
9 or the club?

10 A No.

11 Q Did you have any knowledge of there being -- what kind of
12 car were you in when you were going with Mr. Caraballo to the
13 studio?

14 A Charger.

15 Q A Charger?

16 A Yes.

17 Q Where did he pick you up?

18 A He picked me up in Gowanus.

19 Q Did you have any knowledge as to whether or not there was
20 a gun in the car that he picked you up in?

21 A No.

22 Q So when you get to the club, can you describe what
23 happens?

24 A We get -- we get to the club. As we park, as we park we
25 are talking. I tell Herron that it's too many people. I

1 don't like partying with like too many people and he agreed.
2 He said yeah, Waka, send my love and then we going to get him
3 somewhere else.

4 MR. ARIAIL: Objection.

5 A So after that, after that, he -- he gets out the car
6 after we --

7 Q Who is he?

8 A Herron. He gets out the car. I am in the car with
9 Caraballo. Then we just sitting there. Then Caraballo gets
10 out of the car. I ask Caraballo what he got out the car for.
11 He said to smoke a cigarette. He smoke a cigarette. I am on
12 the phone texting. Caraballo gets back in the car and tell me
13 Herron got locked up.

14 Q He gets back in the car and tells you Herron got locked
15 up.

16 A They just lock Herron up.

17 Q What happens to you?

18 A I get out the car and walk off, like trying to walk away.

19 Q Then what happens?

20 MR. ARIAIL: Objection, Your Honor.

21 A They grabbed me.

22 Q Who is they?

23 THE COURT: Overruled.

24 A The detective.

25 Q What about Caraballo, do you see what happens to him?

1 A No.

2 Q Now, you referred to Crystal Lewis.

3 Was Crystal Lewis working for Ronald Herron in 2009
4 and 2010?

5 A No, I don't think so.

6 MR. ARIAIL: Objection.

7 THE COURT: Sustained.

8 Q Mr. Walker, are you getting anything for testifying here
9 today?

10 A Absolutely not.

11 Q Am I or is anyone from the defense paying you to testify
12 here?

13 A No.

14 Q Have we given you anything at all?

15 A No.

16 Q Have you been intimidated or forced to testify today?

17 A No.

18 Q Am I or is Mr. Herron able to get you a better sentence
19 on your case?

20 A No.

21 MR. SOLOWAY: Nothing further.

22 THE COURT: Cross-examination.

23 MR. ARIAIL: Thank you.

24 (Continued on next page.)

25

1 CROSS-EXAMINATION

2 BY MR. ARIAIL:

3 Q Mr. Walker, my name is Shreve Ariail. I'm an Assistant
4 United States Attorney. I will ask you a few questions.

5 Okay?

6 Just to confirm, you are M-Dot, right?

7 A Why I.

8 Q And your brother is Tyhe Walker, right?

9 A Yes.

10 Q G-I-B?

11 A Absolutely.

12 Q Guy In the Bushes?

13 A Yes.

14 Q And he was indicted in the same case with you, right?

15 A Yes.

16 Q He was indicted with conspiring to sell crack cocaine,
17 right?

18 A Yes.

19 Q And he was indicted with conspiring to sell crack cocaine
20 with you?

21 A Yes.

22 Q Mr. Herron, he was indicted to sell crack cocaine with
23 you and Mr. Herron?

24 A Yes, the whole indictment.

25 Q Crystal Lewis?

1 A Yes.

2 Q Joseph Garcia?

3 A Yes.

4 Q Musa Marshall?

5 A Yes.

6 Q Jorge Mejia also known as Moose?

7 A Yes.

8 Q Verdreea Olmstead, also known as ante?

9 A Yes.

10 MR. SOLOWAY: Objection.

11 THE COURT: Overruled.

12 Q Is that correct?

13 A Yes.

14 Q And he pled guilty, right?

15 A Yes.

16 MR. SOLOWAY: Objection.

17 THE COURT: Sustained.

18 Q Now, just so we are clear, October 5, 2010, is that when
19 you were arrested, right?

20 A Yes.

21 Q Earlier in the evening, you met Algenis Caraballo in the
22 Gowanus Houses, right?

23 A Yes.

24 Q And you and Mr. Caraballo went together to go meet
25 Mr. Herron at the studio, right?

1 A Yes.

2 Q And then when you got to the studio, you went downtown to
3 Club Amnesia, right?

4 A Yes.

5 Q I think you said Uncle Murda was in the car, is that what
6 you said?

7 A Yes.

8 Q Okay. And Mr. Caraballo was driving?

9 A Yes.

10 Q You are in the back seat?

11 A Yes.

12 Q Uncle Murda is sitting where?

13 A On the way going there, on the way going there, we all
14 was in the back. Me, as in me, Uncle Murda and the other guy
15 was in the back. Caraballo was driving. Herron was on the
16 passenger side. Before we got in front of the entrance to the
17 club, we let them out, the two guys, Uncle Murda and the other
18 guy, we let them out the club and then we continued to park.

19 Q And they got out of the car before you parked?

20 A Yes, yes.

21 Q So Mr. Herron, just so we are clear, Mr. Herron is in the
22 passenger front seat?

23 A Yes.

24 Q And you later learned that there was a gun in the glove
25 box right in front of that seat, right?

1 A Yes, later.

2 Q Now, when you got to Club Amnesia, Mr. Herron got out of
3 the car, right?

4 A Yes.

5 Q And he got arrested?

6 A Yes.

7 Q And you got arrested when you got out of the car?

8 A Yes.

9 Q And Mr. Caraballo went out to the West Side Highway,
10 right?

11 A That's what they said.

12 Q And he was arrested?

13 A Yes.

14 Q With the gun in the glove box, right?

15 A Yes.

16 Q And you were charged as a result of that, right?

17 A Yes.

18 MR. SOLOWAY: Objection. He was charged?

19 Objection.

20 THE COURT: Sustained.

21 Q You were indicted with conspiring to sell drugs, were you
22 not?

23 A Yes.

24 Q And you were indicted for conspiring to sell drugs with
25 Ronald Herron, right?

1 MR. SOLOWAY: Objection to what he was indicted for.

2 THE COURT: Sustained.

3 Q At some point you were indicted, right?

4 A Yes.

5 Q For conspiring to sell drugs?

6 A Yes.

7 MR. SOLOWAY: Objection.

8 Q And you were indicted for conspiring to sell drugs in the
9 Gowanus, right?

10 A Yes.

11 MR. SOLOWAY: I object.

12 THE COURT: Overruled.

13 Q And it was crack cocaine that you were indicted for,
14 right, selling crack cocaine with others?

15 A Yes.

16 Q Now, Ronald Herron, your testimony I think was he was a
17 Blood, right?

18 A I didn't say that.

19 Q You didn't say he was Blood?

20 A No.

21 Q You don't know that Ronald Herron is a Blood?

22 A Yes, I know that but I didn't say that.

23 Q Is Ronald Herron a Blood?

24 A Yes.

25 Q Are you a Blood?

- 1 A Yes.
- 2 Q You are a Mad Dawg, right?
- 3 A Yes.
- 4 Q He's a Mad Dawg?
- 5 A Yes.
- 6 Q You are a soldier, right?
- 7 A No.
- 8 Q You have a rank?
- 9 A No.
- 10 Q You are just a member --
- 11 A Yes.
- 12 Q -- of the Murderous Mad Dawgs?
- 13 A Yes.
- 14 Q He has rank, right?
- 15 A No.
- 16 Q He doesn't have a rank?
- 17 It is your testimony he doesn't have rank?
- 18 A I don't know what he got.
- 19 Q You don't know where he's at?
- 20 He is not a Big Homey?
- 21 A No.
- 22 Q He's not a significant member of the Bloods, that's your
- 23 testimony?
- 24 A I don't understand what you mean by that.
- 25 Q Okay. Your testimony is you don't know what rank

1 Mr. Herron is within the Bloods?

2 A Yes, I don't.

3 Q That's not important to you, is it?

4 A No.

5 MR. SOLOWAY: Objection.

6 THE COURT: Overruled.

7 Q Your testimony is that it's not important to you what
8 rank he's in in the Bloods?

9 A Absolutely.

10 Q Is that your testimony?

11 A Yes.

12 Q At some point after you get indicted for conspiring to
13 sell crack cocaine with other people, you decide not to
14 contest your case, right?

15 A I don't understand.

16 Q You decided to go for a plea deal, right?

17 A Yes.

18 Q You decide that you are not going to go to trial?

19 A Yes.

20 Q And ultimately, you took a plea, right?

21 A Yes.

22 Q And you pled guilty to conspiring to sell crack cocaine
23 with other people?

24 A Yes.

25 Q In or about 2007 and 2010, right?

1 A Yes.

2 Q And that was in the Gowanus, right?

3 A Yes.

4 Q And you stipulated that you were responsible for the sale
5 of at least 200 grams of crack cocaine, right?

6 A Yes.

7 Q On October 6, 2011, you went before a judge?

8 A Yes.

9 Q And you pled guilty?

10 A Yes.

11 Q Judge Carter, do you remember that?

12 A Yes.

13 Q And you pled guilty to the charges in the indictment,
14 right?

15 A Yes.

16 MR. SOLOWAY: Objection, Judge.

17 THE COURT: Sustained. That's sustained.

18 Q You pled guilty to conspiring --

19 A I pled guilty to drugs.

20 Q You pled guilty to conspiring to sell crack cocaine with
21 others?

22 A Yes.

23 Q In the Gowanus?

24 A That's the only thing I pled to.

25 Q Now, after you pled guilty, there was a presentence

1 report prepared, right?

2 A Yes.

3 Q And in that presentence report, there were certain facts
4 that were set forth in that presentence report, right?

5 A No.

6 Q You don't remember -- did you look at the presentence
7 report?

8 A Yes.

9 Q The presentence report had certain specifics about the
10 organization that you pled guilty to being involved in?

11 MR. SOLOWAY: Objection.

12 THE COURT: Sustained.

13 A You said facts. That's not --

14 THE COURT: No. It was sustained. You don't have
15 to answer.

16 THE WITNESS: Oh.

17 Q Ultimately, after this presentence report was prepared,
18 you met with your attorney, right?

19 A Yes.

20 Q And you talked about the facts that were set out in the
21 presentence report, did you not?

22 A Yes.

23 Q And at the time you were talking with your attorney about
24 whether you would challenge some of the facts or the things in
25 the PSR?

1 MR. SOLOWAY: Objection.

2 THE COURT: You may answer that.

3 A Repeat it.

4 Q At the time you were talking about whether you would
5 challenge some of the facts in the presentence report?

6 A Some of the things, not the facts.

7 Q Some of the things in the presentence report?

8 A Yes. It's no facts in there.

9 Q Ultimately, your attorney filed a letter on your behalf,
10 right?

11 A Yes.

12 (Continued on next page.)

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1 Q In that letter you did not challenge the fact that there
2 was a conspiracy involving Mr. Herron in the Gowanus houses?

3 MR. SOLOWAY: Objection.

4 MR. ARIAIL: May we approach, Your Honor?

5 THE COURT: Yes.

6 (Side bar.)

7 THE COURT: You have an objection on what?

8 MR. SOLOWAY: On whether or not it's Shondell
9 Walker's burden or duty or roll or anything to object to what
10 Mr. Herron may or may not have done. He has never pled guilty
11 specifically to participating in a conspiracy to sell drugs
12 with Ronald Herron. The fact that the government has an
13 offense conduct section or doesn't have an offense conduct
14 section in the PSR that sets forth the government's theory of
15 what this was about doesn't put any burden on Mr. Walker to
16 say what Herron did or didn't ever do in this case.

17 THE COURT: All right.

18 MR. SOLOWAY: That's the implication of all this.

19 MR. ARIAIL: Your Honor, I think the point is here
20 it's clearly a prior inconsistent statement. He's testified
21 on direct that he had nothing to do with Ronald Herron, that
22 Ronald Herron wasn't involved in the drug enterprise. After
23 the PSR was prepared he's testified that he consulted with his
24 attorney about the facts or the statements that were in the
25 PSR and then based on that conversation with those -- his

1 attorney, his attorney filed a letter objecting to certain
2 aspects of the PSR. He's very clear about that.

3 But the main thing that he did not object to was the
4 existence of the conspiracy and the fact that Ronald Herron
5 was the leader of the enterprise. It's a prior inconsistent
6 statement. I think I am entirely entitled to ask him about
7 it. We should go from there.

8 THE COURT: Objection is overruled.

9 (Continued on next page.)

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1 (In open court.)

2 EXAMINATION CONTINUES

3 BY MR. ARIAIL:

4 Q Mr. Walker, I think you testified just a second ago that
5 after the PSR came out, your attorney and you discussed making
6 some objections --

7 A Yes.

8 Q -- to it, right?

9 A Yes.

10 Q Your attorney and you sat down and talked about a letter,
11 right, filing a letter with the objections in it?

12 A Yes.

13 Q Your attorney filed that letter on your behalf?

14 A Yes.

15 Q Okay. In that letter, Mr. Walker, isn't it a fact that
16 you did not contest any of the information in the PSR about
17 Ronald Herron's leadership of the drug trafficking operation?

18 MR. SOLOWAY: Objection.

19 THE COURT: Overruled.

20 A I don't -- repeat again.

21 Q Isn't it a fact that in that letter you didn't challenge
22 the fact that Ronald Herron was the leader of the drug
23 operation that you pled guilty to?

24 A My PSR is about me. I challenged things that said about
25 me.

1 Q I am talking about the letter, Mr. Walker. In the letter
2 that you filed with your attorney, isn't it a fact that you
3 actually said that you pleaded guilty to participating in a
4 drug conspiracy with the other defendants in the indictment?

5 MR. SOLOWAY: Objection.

6 THE COURT: Overruled.

7 A I don't understand your question.

8 Q Mr. Walker, isn't it a fact that you and your attorney
9 sent a letter to the Court in which you said that you pleaded
10 guilty to participating in a drug conspiracy with the other
11 people charged in the indictment?

12 MR. SOLOWAY: Objection.

13 A Yes.

14 Q You did say that?

15 A I challenged that?

16 Q You didn't challenge that?

17 A Yes, I did challenge. No, I didn't challenge that. I
18 pled to that.

19 Q You pled to that?

20 A Yes.

21 Q The other people in the indictment, just so we are clear,
22 were Ronald Herron?

23 A Yes.

24 Q Crystal Lewis?

25 A Yes.

1 MR. SOLOWAY: Objection.

2 Q Jorge Mejia?

3 A Yes. We just said that.

4 Q Joseph Garcia?

5 A Yes.

6 Q Verdreea Olmstead?

7 A Yes.

8 Q And the charges were for crack?

9 You pled guilty to selling crack, right?

10 A Why I.

11 Q In the Gowanus during that time period?

12 A Yes.

13 THE COURT: Overruled.

14 Q Now, Mr. Herron, you were arrested with him, right?

15 A Yes.

16 Q And your testimony today is that I think you said that
17 you know he's a Blood?

18 A Yes.

19 Q You knew at the time that he was a Mad Dawg, right?

20 A Yes.

21 Q And you are a Mad Dawg?

22 A Yes.

23 Q And at some point you learn that Mr. Herron wants to talk
24 to you, right?

25 A No.

1 Q You learn that Mr. Herron wants to talk to you about
2 possibly having you testify at this trial, right?

3 A No.

4 Q You didn't have a meeting with Mr. Herron in May of 2013,
5 where you talked with Mr. Herron about testifying at this
6 trial?

7 A We didn't talk about that.

8 Q Okay. You had a meeting with Mr. Herron?

9 A Yes.

10 Q Mr. Soloway was present at that meeting?

11 A Yes.

12 Q Your attorney was present at that meeting?

13 A Yes.

14 Q You were present at that meeting?

15 A Yes.

16 Q And your testimony today is that you did not talk about
17 your testimony or your potential testimony in this trial, is
18 that your testimony?

19 A No. We didn't talk about that.

20 Q You didn't talk about that?

21 A No.

22 Q Now, you know what a snitch is?

23 A No. What's a snitch?

24 Q You don't know what a snitch is?

25 A No.

1 Q That's your testimony, you don't know what a snitch is?

2 A No.

3 Q Do you know what a rat is?

4 A No.

5 What is that.

6 Q You don't know what a rat is?

7 A No.

8 Q Do you know what it means to tell on someone?

9 A Yes, I know what the means to tell on someone.

10 Q What does it mean to tell on someone?

11 A To tell what you saw.

12 Q Tell what you saw?

13 A Yes.

14 Q When we talk about tell, we are talking about telling on
15 criminal conduct, right?

16 A Yes.

17 Q Bad things that people did, telling on other people,
18 right?

19 A Yes.

20 Q But you don't know what a snitch is?

21 A No.

22 Q Well, isn't there a rule in the Bloods about not telling
23 on people?

24 A No.

25 Q You are not aware of that rule?

1 A No.

2 Q You are not aware of the rule about not snitching when
3 you are in the Bloods?

4 A No.

5 Q The Bloods, I think you said, it was just -- what were
6 the Bloods to you?

7 A It was a fashion. I just wanted to be a part of
8 something. It was cool.

9 Q It was cool.

10 A Yes.

11 Q Fashion?

12 A Yes.

13 Q Not about loyalty, is it?

14 A No.

15 Q Do you know a guy named Rashah Holmes?

16 A No.

17 Q You don't know who Rashah Holmes is?

18 A Rashah Holmes?

19 Q G-Blaze, do you know who G-Blaze?

20 A Yes, I know who G-Blaze is.

21 Q You know who G-Blaze is?

22 A Yes.

23 Q He lives in 423 Baltic, right?

24 A Yes.

25 Q Apartment 10-E, right?

- 1 A Yes.
- 2 Q His brother is a guy named Sharif Holmes, right?
- 3 A I don't know who Sharif Holmes is.
- 4 Q You know who Shaguns is?
- 5 A Yes.
- 6 Q Shaguns is his brother, right?
- 7 A Yes.
- 8 Q Shaguns is a good friend of the defendant's, right?
- 9 A Yes.
- 10 Q G-Blaze is a good friend of the defendant's, right?
- 11 A Yes.
- 12 Q G-Blaze is a Blood, right?
- 13 A I don't know.
- 14 Q You don't know that G-Blaze is a Blood?
- 15 A No.
- 16 Q Sharif Holmes, he's a Blood too right?
- 17 A No.
- 18 Q He is not a Blood?
- 19 A No.
- 20 Q But he's a close friend of the defendant's?
- 21 A Yes.
- 22 Q Do you know who Bam and Crime were?
- 23 A Yes.
- 24 Q Who were they?
- 25 A It was Bam and Crime.

1 Q Who were they in the Gowanus?

2 A They was people from the Gowanus Houses.

3 Q Did they sell drugs?

4 A I don't know what they did.

5 Q You don't know that they sold drugs?

6 A No.

7 Q You sold drugs in the Gowanus Houses, right?

8 A Yes.

9 Q You don't know who Bam and Crime were?

10 MR. SOLOWAY: He didn't say -- objection.

11 A I said I know what they was. I said I don't know what
12 they did.

13 THE COURT: Overruled.

14 Q You don't know -- you didn't know that Bam and Crime were
15 selling drugs?

16 A No.

17 Q Do you know they got arrested, right?

18 A Yes, I know they got arrested.

19 Q You know that Bam and Crime went to jail for a long time,
20 right?

21 A Yes.

22 Q For selling drugs in the Gowanus?

23 A I don't know what they did. I just know they went to
24 jail for a long time.

25 Q They went to jail for a long time.

1 You know there were people who testified against
2 them? You know that, right?

3 A Yes.

4 Q Cooperators?

5 Do you know a guy named Smiley?

6 A Yes.

7 Q He was a cooperator, right?

8 A If you say so.

9 Q You don't know?

10 A No.

11 Q You don't know one way or the other?

12 A No.

13 Q Big Lou, Big Lou was a cooperator; do you remember him?

14 A I know him but I don't know if he's a cooperator.

15 Q All right. You don't know who Smiley was?

16 A No.

17 Q You don't know that Smiley cooperated?

18 A I know Smiley but I didn't know that he cooperated.

19 Q Have you ever heard the term being on a plate?

20 A No.

21 Q Being food?

22 A No.

23 Q Now, Mr. Walker, after you got arrested, there came a
24 time when people started cooperating in this case.

25 Do you remember that?

1 A In my case?

2 Q Yes.

3 A No.

4 Q You don't know that?

5 A No.

6 Q There came a time when there was a rumor going around
7 that you were cooperating; do you remember that?

8 A Yes.

9 Q And that upset you, right?

10 A Yes.

11 Q It upset you because you didn't want people on the street
12 to think that you were a snitch, right?

13 A Yes.

14 Q Okay. So we now agree that you know what the term snitch
15 is?

16 A No. Because you put it with -- with cooperating and rat.
17 So it's not hard to make the connection, what you're talking
18 about.

19 Q So you know what the term rat is too?

20 A Yes.

21 Q Okay. You didn't want people in the neighborhood to
22 think you were a rat, right?

23 A It wasn't about that.

24 Q It wasn't about that?

25 A No.

1 Q You were concerned for some reason?

2 A It's about having morals and principles and not lying.

3 Q About morals and principles?

4 A Yes. And being real with yourself.

5 Q And not tell on others, right?

6 A No, I don't have nothing to do with that.

7 Q Mr. Walker, there came a time when you got upset about
8 that, right?

9 A You can't tell on something you don't know.

10 Q Mr. Walker, I asked you a question. There came a time
11 when you got upset about that, right?

12 A Yes.

13 Q You were mad?

14 A Yes.

15 Q You were mad that people on the street were calling you a
16 snitch, right?

17 A Yes.

18 Q When you were holding it down?

19 MR. SOLOWAY: Objection, objection.

20 THE COURT: Overruled.

21 Sit down.

22 Q Yes or no, you were made that people --

23 A Yes.

24 Q -- were -- you were mad about it, right?

25 A Yes.

1 Q You were really mad because they were saying you were
2 snitching on Ra?

3 A No.

4 Q You weren't mad about that at all?

5 A They were saying I was snitching, period, not
6 specifically on him.

7 Q Mr. Walker, you got so mad you wrote a letter, right?

8 A Yes.

9 Q You wrote a letter from jail?

10 A Yes.

11 Q And you wrote that letter to Rashah Holmes, right?
12 G-Blaze?

13 A Oh. Yes.

14 Q You wrote a letter in which you told G-Blaze that you
15 were pissed, right?

16 A Yes.

17 Q Because people were calling you a rat?

18 A Yes.

19 Q But you weren't a rat?

20 A Yes.

21 Q You weren't like Smiley, right?

22 A No.

23 Q You weren't telling on people --

24 A No.

25 Q -- about the crimes that you saw?

1 A Never seen no crimes.

2 Q You weren't telling on people about the crimes that you
3 saw?

4 A I never seen no crimes.

5 Q You wrote that letter in July of 2013, right?

6 A I don't remember the date.

7 Q Sometime in 2013?

8 A I don't remember. I don't remember. I know I wrote a
9 letter, though.

10 Q It was before you met with the defendant, right?

11 A Yes.

12 Q Before you went to meet with the defendant and his
13 attorney and your attorney, right?

14 A Yes.

15 MR. ARIAIL: May I approach, Your Honor?

16 THE COURT: Yes, you may.

17 Q Showing the witness what's been marked as Government's
18 Exhibit 1500.

19 Do you recognize this?

20 A Yes.

21 Q Is this the letter you wrote?

22 A Yes.

23 MR. ARIAIL: Offer Government's Exhibit 1500, Your
24 Honor.

25 MR. SOLOWAY: You mind if I see it?

1 MR. ARIAIL: I will give you a copy.

2 (Pause.)

3 THE COURT: Any objection?

4 MR. SOLOWAY: No.

5 THE COURT: Government Exhibit 1500 is received in
6 evidence.

7 (Marked.)

8 Q Mr. Walker, at that meeting with the defendant, isn't it
9 a fact that you told the defendant you never cooperated in the
10 case?

11 You told him that, right?

12 A Yes.

13 Q You told him that you weren't a snitch?

14 A Yes.

15 Q Right?

16 And just before you did that, you sent this letter?

17 A Yes.

18 MR. ARIAIL: Request permission to publish, Your
19 Honor.

20 THE COURT: Yes, you may.

21 Q On the cover of exhibit's 1500, Mr. Walker, is that your
22 name in the upper left-hand corner?

23 A Yes.

24 Q That number to the right of that, is that your marshal's
25 number?

1 A Yes.

2 Q And the address there, 423 Baltic Street, apartment 10-E,
3 that's Rashah Holmes's address, G-Blaze, right?

4 A Yes.

5 Q That's in the Gowanus?

6 A Yes.

7 Q Right?

8 And Chris Paul, he's an NBA basketball player,
9 right?

10 A Yes.

11 Q He doesn't live in the Gowanus, does he?

12 A No.

13 That's what I call him.

14 Q You call G-Blaze Chris Paul?

15 A Yes.

16 Q In the letter here on the next page, these are your
17 words, right?

18 You wrote this?

19 A Yes.

20 Q You wrote this letter?

21 A Yes.

22 Q I want you to read it aloud to the jury.

23 A I am going to get right to it. If -- if -- if niggaz
24 think I'm a rat, niggaz never know me. Soup Fuk the money.
25 You all ain't answering my calls like I'm Smiley or one of

1 these dudes. I got morals and principles. This is me. Dolo
2 Son. Jail shit don't break me. Niggaz should know that. If
3 you all know my love for homie. No frank ocean. I'm forever
4 barking. I seen him last week. Niggaz be talking. In tell
5 Dracy this ain't no threat. I put hands on that nigga on new
6 money. You see when I come home the right way. Tell the hood
7 this. If niggaz think otherwise when the smoke clears niggaz
8 see. Tell don't change up. Keep it like that. I rather no
9 love than fake love. You can put this on Facebook whatever.
10 Mad love. Stay tuned. Me telling? Picture that.

11 Q Mr. Walker, those are your words?

12 A Yes.

13 Q Mad love?

14 A Yes.

15 Q Those are your words?

16 A Yes.

17 Q I am forever barking, right?

18 A Yes.

19 Q Those are your words?

20 A Yes.

21 Q Jail shit don't break me, those are your words?

22 A Yes.

23 Q You all know my love for homey, those are your words,
24 right?

25 A Yes.

1 Q Tell the hood this, those are your words?

2 A Yes.

3 Q And when the smoke clears, those are your words, right?

4 A Yes.

5 Q The smoke is clearing, Mr. Walker, right?

6 A Yes.

7 Q And you are on the stand testifying for Ronald Herron,
8 are you not?

9 A Yes.

10 MR. ARIAIL: Nothing further, Your Honor.

11 THE COURT: Redirect.

12 (Continued on next page.)

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1 (CONTINUING)

2 BY MR. SOLOWAY:

3 Q Mr. Walker, in the letter that you wrote, what did you
4 mean when you said morals and principles?

5 A I mean I got to live with myself knowing that I lied on
6 somebody.

7 Q And when you say lied on somebody, what are you referring
8 to?

9 A People in the case, including Herron.

10 Q Why are you testifying here?

11 A Because I know these things that's being said is not true
12 about him.

13 Q When you were asked about a letter that your lawyer wrote
14 objecting to things in the PSR, is that a letter that you
15 wrote?

16 A No.

17 Q And when that letter was written, did you believe that
18 you were agreeing that you worked for Ronald Herron selling
19 drugs?

20 A No.

21 Q Was it your intention in this case to admit that you
22 conspired to sell drugs in that letter or in any other way?

23 A No.

24 Q When you pled guilty, you went in front of a judge;
25 right?

1 A Yes.

2 Q Did you ever admit to the Judge that you sold drugs with
3 Ronald Herron?

4 A Never.

5 Q Is it that you said I conspired to sell drugs with
6 others?

7 A Yes.

8 Q And did you say anything about who those others were?

9 A No.

10 Q Did you ever believe that anything you did in this case
11 was a concession by you or an admission by you that you sold
12 drugs with Ronald Herron?

13 A No.

14 Q Did you sell drugs with Ronald Herron ever?

15 A No.

16 Q Or for him?

17 A No.

18 Q Now, when you were in the car, you were asked questions.

19 When you were in the car, you remember you were
20 asked questions by Mr. Ariail about being in the car and where
21 everybody was; right? Do you remember that?

22 A Yes.

23 Q And he pointed out with great specificity how close
24 Mr. Herron was to that glove compartment where a gun was
25 recovered.

1 Do you remember those questions?

2 A Yes.

3 Q Did you ever see Mr. Herron put a gun in that glove
4 compartment?

5 A No.

6 Q Did you ever see anybody put a gun in that glove
7 compartment?

8 A No.

9 Q Did you put a gun in the glove compartment?

10 A No.

11 Q Do you know whether the glove compartment was open or
12 locked?

13 A I know it was locked.

14 Q You know it was locked?

15 A Yes.

16 Q How do you know that?

17 A Because I seen him lock it.

18 Q Who?

19 A Caraballo.

20 Q Now, when I met with you, remember Mr. Ariail asked you
21 questions about we had a meeting in jail; right? When
22 Mr. Ariail asked you questions about how I came to the jail?

23 A Yes.

24 Q Do you remember that, those questions?

25 A Yes.

1 Q And we had a meeting where it was you, your lawyer,
2 right?

3 A Yes.

4 Q And Mr. Herron was there?

5 A Yes.

6 Q And you were there, right?

7 A Yes.

8 Q And when we had that meeting what, in general, did we
9 talk about?

10 A Why I'm not able to get sentenced due to his trial.

11 Q And did we talk about what you did in the case that made
12 you guilty?

13 A Yes.

14 Q And did there ever come a time that I or anyone at that
15 meeting told you to lie about anything?

16 A No.

17 Q You know it's the job of lawyers to investigate cases;
18 right?

19 A Yes.

20 Q You've had cases before; right?

21 A Yes.

22 Q To meet with witnesses, that's part of investigating;
23 right?

24 A Yes.

25 Q And the meeting that we had was with the permission of

1 your lawyer; right?

2 A Yes.

3 Q Mr. Walker, are you afraid of Mr. Herron?

4 A No.

5 Q Are you afraid of him doing something to you if you don't
6 testify here?

7 A No.

8 Q Are you afraid of the Government?

9 A No.

10 Q Are you afraid that somehow you're going to get a worse
11 sentence because you came in here and testified because of
12 something the Government might do to you?

13 A No.

14 Q Do you have anything to gain her personally by
15 testifying?

16 A No.

17 Q Do you have anything to lose, as far as you know?

18 A My freedom.

19 Q What do you mean by that?

20 A My, my, my lawyer making me aware that other charges
21 could be brung up with me for testifying.

22 Q By who?

23 A What you mean by who?

24 Q Well, you said other charges could be brought up against
25 you for testifying.

1 Who could bring those other charges?

2 A Oh, the Government.

3 Q Is does that worry you?

4 A Little bit.

5 Q But you're here testifying anyway?

6 A Yes.

7 Q Why?

8 A Because it's the right thing to do.

9 Q Why?

10 A Because it's the right thing to do.

11 Q What makes it the right thing to do?

12 A Because I know he's innocent.

13 MR. SOLOWAY: Thank you.

14 THE COURT: Anything further?

15 MR. ARIAIL: No, Your Honor.

16 THE COURT: All right, we'll take a brief break.

17 All rise for the jury.

18 (Jury exits.)

19 (In open court; outside the presence of the jury.)

20 THE COURT: You may be seated.

21 You are excused.

22 (Witness excused.)

23 THE COURT: Are we ready for the stipulations?

24 MR. ARIAIL: Your Honor, in terms of scheduling

25 today, I'm just thinking about what we have to get done after

1 the Defense case is done.

2 I think we have a general agreement on a stipulation
3 for our rebuttal case, but I have to finish drafting it and
4 making sure I have the pieces of paper correct. What I was
5 going to suggest, Your Honor, is that we read stipulations.
6 The Defense can rest and then maybe we take an early lunch and
7 start summations after early lunch; that we have say, an hour
8 in which we can get all of our things squared away, get our
9 evidence here and have our stipulation finalized. We could
10 read the stipulation right as we come back and then, go right
11 into summations.

12 THE COURT: Are there stipulations that you have
13 that can be read now?

14 MR. SOLOWAY: Yes, Defense stipulations.

15 THE COURT: Defense stipulations.

16 MR. SOLOWAY: Yes.

17 THE COURT: How long will that take, five-minutes?
18 Ten minutes?

19 MR. NEUMAN: I think we have six or seven
20 stipulations, Judge.

21 THE COURT: All right, so ten minutes, fifteen
22 minutes and then we'll take an early lunch.

23 During that one-hour period, any further
24 stipulations will need to be completed and they will be read
25 immediately after lunch and we'll go directly into closings.

1 Is that agreeable?

2 MR. SOLOWAY: Absolutely, Judge.

3 MR. ARIAIL: Yes, Your Honor.

4 THE COURT: Let's bring the jury back.

5 So there will be no further witnesses, right,

6 Mr. Ariail, on rebuttal? You don't anticipate that.

7 MR. ARIAIL: I've had a conversation with Defense
8 Counsel and they've indicated that they would be willing to
9 stipulate to the types of things that we're going to be
10 putting in.

11 THE COURT: Okay.

12 MR. ARIAIL: But I don't know, I mean, if I get some
13 information back over lunch and there's some change in
14 position.

15 THE COURT: I'll say if there is any further
16 testimony or stipulations, they will be read after lunch.

17 MR. ARIAIL: If the issue, Your Honor, is the event
18 that they do not stip, our witness is in Albany gathering
19 documents that we need for the stipulation and wouldn't be
20 available until Wednesday. I have every expectation we will
21 have a stipulation worked out, but just so the Court is aware
22 of that.

23 MR. SOLOWAY: I mean, I'm not looking to have
24 Mr. Ariail bring witnesses from Albany, but to the extent that
25 there are relevancy objections or other legal objections,

1 Your Honor might be called upon to rule on those.

2 (Jury enters.)

3 THE COURT: Please, be seated.

4 Mr. Neuman.

5 MR. NEUMAN: Judge, I'd like to first read a
6 stipulation that's been marked Defendant's Exhibit Y.

7 THE COURT: Very well.

8 MR. NEUMAN: It is hereby stipulated and agreed by
9 and between the defendant Ronald Herron by his attorneys
10 Robert Soloway and James Neuman and the United States of
11 America by Assistant U.S. Attorneys Shreve Ariail, Rena Paul
12 and Samuel Nitze as follows:

13 1) On July 18th, 2001, Rafael Gonzalez, a/k/a Feo
14 was arrested by officers of the New York City Police
15 Department for making five illegal sales of crack cocaine to
16 undercover police officers in Brooklyn between April 25th,
17 2001 and July 12th, 2001.

18 2) The dates and locations where those five sales
19 were made were April 25th, 2001, front of 186 Bergen Street;
20 May 15th, 2001, lobby of 198 Bond Street; May 29th, 2001,
21 front of 427 Baltic Street; July 1st, 2001, behind 186
22 Bond Street and; July 12th, 2001, inside 198 Bond Street.

23 3) The parties agree that this stipulation may be
24 received into evidence.

25 And the document is dated and signed by Counsel for

1 both parties.

2 The Defense would offer this Exhibit Y into
3 evidence.

4 THE COURT: Any objection?

5 MR. ARIAIL: No, Your Honor.

6 THE COURT: Defendant's Exhibit Y is received in
7 evidence.

8 (Defendant's Exhibit Y was received in evidence.)

9 MR. NEUMAN: I am now going to read a stipulation
10 that's been marked Defendant's Exhibit Z.

11 It is hereby stipulated and agreed by and between
12 the United States of America by Assistant United States
13 Attorneys Shreve Ariail, Rena Paul and Samuel Nitze and Ronald
14 Herron with the consent of his attorneys, Robert Soloway and
15 James Neuman.

16 1) The distance from the front door of 198
17 Bond Street straight to the curb line on Bond Street is
18 66 feet. The measurements of the glass window are two feet
19 and five inches by one foot and nine inches.

20 2) It is agreed this stipulation may be received in
21 evidence at trial.

22 And we offer this stipulation marked as Defendant's
23 Exhibit Z into evidence.

24 THE COURT: Any objection?

25 MR. ARIAIL: No, Your Honor.

1 THE COURT: Defendant's Exhibit Z is received in
2 evidence.

3 (Defendant's Exhibit Z was received in evidence.)

4 MR. NEUMAN: I am now going to read a stipulation
5 that's been marked Defendant's Exhibit DD.

6 It is hereby stipulated and agreed by and between
7 the United States of America by Assistant U.S. Attorney Shreve
8 Ariail, Rena Paul and Samuel Nitze and Ronald Herron with the
9 consent of his attorneys Robert Soloway and James Neuman that:

10 1) An agent's report from a proffer session dated
11 July 24th, 2011, reflects that Rafael Gonzalez stated that he
12 was given a 22-caliber firearm by an individual he identified
13 as Shah and that he sold the gun two to three months later.

14 2) An agent's report from a proffer session dated
15 June 6th, 2011, reflects that Gonzalez stated that after
16 switching cars, Ronald Herron dropped him off at his
17 baby-mom's house in Sunset Park and did not say that he had
18 Herron drop him off at a location in Park Slope so Herron
19 would not know where his baby mother lived.

20 3) A report from a proffer session dated
21 December 14th, 2011 reflects that Gonzalez stated that he used
22 the gun to rob an individual named Dave of approximately two
23 pounds of weed.

24 4) This stipulation may be received into evidence
25 as a Defense Exhibit at trial.

1 The Defense would offer this stipulation marked
2 Exhibit DD into evidence.

3 THE COURT: Any objection?

4 MR. ARIAIL: No objection, Your Honor.

5 THE COURT: All right. Defendant's Exhibit DD is
6 received in evidence.

7 (Defendant's Exhibit DD was received in evidence.)

8 MR. NEUMAN: I will now read a stipulation that's
9 been marked Defendant's Exhibit EE.

10 It is hereby stipulated and agreed by and between
11 United States of America by Assistant United States Attorneys
12 Shreve Ariail, Rena Paul and Samuel Nitze and Ronald Herron,
13 with the consent of his attorneys Robert Soloway and James
14 Neuman, that:

15 1) On November 4th, 2010 an indictment was filed
16 charging Algenis Caraballo with two Counts: One, conspiracy
17 to distribute cocaine base and heroin in violation of
18 21 U.S.C. Section 841(b)(1)(a)(3) and 841(b)(1)(c) and two,
19 being a felon in possession of a firearm in violation of
20 18 U.S.C. Section 922(g)(1).

21 2) The statutory penalty for the first count of the
22 indictment accusing Mr. Caraballo of conspiracy to distribute
23 drugs was ten years to life.

24 3) This stipulation may be received into evidence
25 as a Defense Exhibit at trial.

1 The Defense would offer this stipulation into
2 evidence as Defendant's Exhibit EE.

3 THE COURT: Any objection?

4 MR. ARIAIL: No, Your Honor.

5 THE COURT: Defendant's Exhibit EE is received in
6 evidence.

7 (Defendant's Exhibit EE was received in evidence.)

8 MR. NEUMAN: I will now read into the record a
9 stipulation that has been marked Defendant's Exhibit FF.

10 It is hereby stipulated and agreed by and between
11 the United States of America by Assistant United States
12 Attorneys Shreve Ariail, Rena Paul and Samuel Nitze and Ronald
13 Herron, with the consent of his attorneys Robert Soloway and
14 James Neuman, that:

15 If called as a witness Officer Ricardo Nuñez would
16 testify to the following facts:

17 1) On April 18th, 2001 Algenis Caraballo was
18 arrested at approximately 9:38 p.m. at 414 Baltic Street,
19 County of Kings, State of New York.

20 2) At approximately 9:45 p.m. while en route to the
21 precinct, Officer Nuñez overheard Mr. Caraballo state, quote,
22 I'm a gambler, I have a problem, I owed an \$800 bet and was
23 forced to sell drugs or I would be killed if I did not pay off
24 my debt, close quote.

25 3) It is agreed that this stipulation may be

1 received into evidence as Defendant's Exhibit at trial.

2 It's dated and signed by the parties. The Defense
3 offers this stipulation into evidence as Defendant's
4 Exhibit FF.

5 THE COURT: Any objection?

6 MR. ARIAIL: No, Your Honor.

7 THE COURT: Defendant's Exhibit FF is received in
8 evidence.

9 (Defendant's Exhibit FF was received in evidence.)

10 MR. NEUMAN: And I will now read into the record a
11 stipulation that's been marked Defendant's Exhibit GG. This
12 is GG.

13 It is hereby stipulated and agreed by and between
14 United States of America by Assistant United States Attorneys
15 Shreve Ariail, Rena Paul and Samuel Nitze, and Ronald Herron
16 with the consent of his attorneys Robert A. Soloway and James
17 Neuman that:

18 1) Defense Exhibit AA are true and accurate bank
19 records of Chase Bank checking account number -- there's a
20 long number ending with the digits -- 7065 and Chase Bank
21 savings account number -- and it's a long number ending in the
22 digits -- 7001, both belonging to account holder Jonathan Rice
23 for the time period July 2007 through December 2010.

24 2) Defense Exhibit AA-X contains selected --

25 MR. SOLOWAY: I don't mean to interrupt, Jim.

1 This is already in evidence, Your Honor.

2 THE COURT: All right.

3 MR. NEUMAN: The underlying document is in evidence.

4 MR. SOLOWAY: Okay, I'm going to sit down, I'm
5 sorry.

6 THE COURT: AA is in evidence, is it not?

7 MR. NEUMAN: Yes.

8 MR. SOLOWAY: Oh, the stipulation not.

9 MR. NEUMAN: This is a stipulation. The AA is in
10 evidence.

11 So, number two was that Defense Exhibit AA-X
12 contains selected documents excerpted from Defendant's
13 Exhibit AA.

14 3) It is agreed this stipulation may be received in
15 evidence at trial.

16 And it's dated and signed by the parties and Defense
17 would offer this stipulation into evidence as Defendant's
18 Exhibit GG.

19 THE COURT: Defendant's Exhibit GG is received in
20 evidence without objection.

21 (Defendant's Exhibit GG was received in evidence.)

22 MR. NEUMAN: Lastly, this stipulation marked
23 Defendant's Exhibit HH.

24 It is hereby stipulated and agreed, by and between
25 the United States of America by Assistant United States

1 Attorneys Shreve Ariail, Rena Paul and Samuel Nitze, and
2 Ronald Herron, with the consent of his attorneys Robert
3 Soloway and James Neuman that:

4 1) An agent's report of a proffer session held on
5 June 24th, 2010 reflects that Angel Figueroa stated that Crime
6 Smiley and Ronald Herron slashed and gun-butted Pete in the
7 face in the late 1990s.

8 2) An agent's report of a proffer session held on
9 October 28th, 2010 indicates that Angel Figueroa stated that
10 he never got along with Ronald Herron.

11 3) This stipulation may be received into evidence
12 as a Defense Exhibit at trial.

13 And it's dated and signed by the parties. We offer
14 this stipulation at Defendant's Exhibit HH into evidence.

15 THE COURT: Any objection?

16 MR. ARIAIL: No, Your Honor.

17 THE COURT: All right, Defendant's Exhibit HH is
18 received into evidence.

19 (Defendant's Exhibit HH was received in evidence.)

20 MR. NEUMAN: That's all of them.

21 THE COURT: Thank you.

22 MR. SOLOWAY: Your Honor, the final thing before we
23 rest is simply that Defendant's Exhibit II, pursuant to
24 stipulation with the Government, Rafael Gonzalez's cooperation
25 agreement will also be put into evidence.

1 MR. ARIAIL: On consent, Your Honor.

2 THE COURT: All right. Defense Exhibit II is the
3 cooperation agreement of Rafael Gonzalez. It is admitted into
4 evidence without objection.

5 Correct?

6 MR. ARIAIL: Correct, Your Honor.

7 (Defendant's Exhibit II was received in evidence.)

8 THE COURT: That's it.

9 MR. SOLOWAY: The Defense rests, Your Honor.

10 THE COURT: The Defense rests. Very well.

11 Members of the Jury, at this time we are going to
12 take our lunch break. There may be some additional testimony
13 or stipulations after lunch, after which we will begin closing
14 arguments. The Government will give its closing first, the
15 Defense will then give its closing and then, the Government
16 will give its rebuttal.

17 I expect that we may go a little later than normal,
18 but we will try to get in all the closings today so that on
19 Wednesday, when you return, we can go right in to the jury
20 charge. If that creates a problem for anybody, try to resolve
21 it because it would be helpful if we could just move the case
22 along very smartly.

23 Lunch will be here in the next 20 minutes.

24 At this time, we will take a one-hour break for
25 lunch.

1 All rise for the jury.

2 (Jury exits.)

3 (In open court; outside the presence of the jury.)

4 THE COURT: Please, be seated.

5 I'm not quite sure how we're going get it all done
6 this afternoon, frankly, but we'll try. If we get to the
7 point where we're at 6:00 o'clock at night, something's got to
8 happen. So, when I count 1:30 to 4:30, and then another two
9 hours is 6:30, and I haven't even gotten to rebuttal yet. So,
10 I will see how long the jury can go.

11 How long will these stipulations take, Shreve?

12 MR. ARIAIL: The stipulation, I think it's probably
13 a three, maybe four-page document, so it shouldn't take very
14 long at all. I'm going to go draft it right now.

15 THE COURT: And if there is no stipulation, it means
16 that we're go to have to adjourn until Wednesday and then do
17 it all on Wednesday and Thursday?

18 MR. ARIAIL: I think, based on my conversation with
19 Mr. Soloway, we should be in a good spot.

20 That would be what would happen.

21 THE COURT: I've been in a lot of spots in the last
22 five hours and I haven't always known where the next spot
23 would be, so I'm trying to anticipate all the possibilities in
24 the grand world, in the constellation of possibilities, where
25 we might be on Wednesday morning.

1 MR. ARIAIL: Well, I couldn't have conceived of
2 being in this situation at this point in the trial,
3 Your Honor, so.

4 THE COURT: We'll see what happens. We'll start
5 again at 1:30. Thank you.

6 You'll be ready to go with closings at 1:30. Set
7 yourselves up, we're going to go at 1:30.

8 All right, thank you.

9 ALL: Thank you.

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11 (Continued on following page.)

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1 A F T E R N O O N S E S S I O N

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3 (In open court; jury not present.)

4 THE COURT: Please be seated.

5 (Pause.)

6 THE COURT: Are we going to needs the Elmo?

7 MR. NITZE: No, your Honor. I have a laptop that's
8 set up to play here. I may need some help putting the lights
9 down twice and up again.

10 MR. ARIAIL: Your Honor, we're waiting for a
11 stipulation to be signed off by the defendant. They are
12 looking at it now.

13 (Pause.)

14 THE COURT: All right. We're giving out the second
15 draft of the charge as to the law.

16 (Pause.)

17 MR. NEUMAN: We're trying to work out a stipulation.
18 We want to let you know, so that you are not in the dark.

19 (Pause.)

20 MR. SOLOWAY: Judge, we're ready. Mr. Ariail is
21 just finalizing. There's going to be no argument. We'll be
22 ready to go into the proceedings after he's finished with the
23 language. No argument.

24 (Pause.)

25 MR. ARIAIL: I'm ready, your Honor. I thought

1 Mr. Soloway indicated we were ready.

2 THE COURT: He said he's ready.

3 MR. ARIAIL: I'm sorry. We're ready, your Honor.

4 MR. SOLOWAY: Judge, there was just one thing, and I
5 was going to do this at the end of the day. I wanted to make
6 sure -- I thought that a lot of the questions that were asked
7 of Shondell Walker were improper regarding what he was
8 indicted for and regarding what the letters relating to the
9 PSR and objections to the PSR indicated. And it seems to me
10 that there is not a basis for the government to argue on
11 summations that the letters Mr. Siegel wrote relating to
12 objections can be construed as an admission by the witness, by
13 Mr. Walker, as to the structure of the organization or any of
14 those. That's my position. The government shouldn't be able
15 to argue that. It's not fair. The fact -- for the reasons
16 that I argued at sidebar, actually. And I don't really want
17 to go into this at any greater length at this stage, but I'm
18 going to have a motion for a mistrial at the end of the day,
19 later.

20 THE COURT: That's fine.

21 Yes.

22 MR. NITZE: The government's doesn't intend to make
23 arguments in summation or rebuttal about that particular
24 letter. And to the extent that the defense wants to raise the
25 possibility of an instruction, my guess is, we would oppose

1 it. But we have tomorrow to work out adjustments of that
2 sort. I don't plan to reference that letter in closing. I
3 may reference the letter that's in evidence.

4 MR. SOLOWAY: I'm not talking about that letter.
5 I'm not talking about the letter Mr. Walker wrote. I'm
6 talking about conclusions that the government's suggested by
7 virtue of Mr. Siegel's objections and all of the things that
8 flowed from that. I'm not talking about the letter that
9 Mr. Walker wrote.

10 THE COURT: Go ahead.

11 MR. NITZE: I mean, I don't know, as I stand here,
12 whether I would reference the letter that Mr. Siegel wrote to
13 the Court saying that his client pled guilty to the crimes he
14 was charged with committing along with others in the
15 indictment, because it's fairly clear that a statement of the
16 lawyer is a statement of the clients, and that is utterly
17 inconsistent with the testimony that was given from the
18 witness stand. I don't see that there's any evidentiary
19 issue, a reason why we couldn't refer to it. It's my
20 expectation that we are not going to.

21 THE COURT: The implication from questions and the
22 answers is that the witness didn't object to portions of the
23 Presentence Report which linked him to the defendant and other
24 alleged coconspirators. I think that's the issue.

25 Is that the issue?

1 MR. SOLOWAY: That is the issue. And also whether
2 or not it's a adoption of a lengthy offense conduct in
3 connection with a PSR that includes things that
4 many -- that clients don't necessarily have any reason to
5 address

6 THE COURT: Right.

7 So, if you want to propose an additional charge to
8 the jury that might rectify, clarify or address that
9 particular issue, just let me know tomorrow what that is.

10 MR. SOLOWAY: Yes, your Honor.

11 THE COURT: But if it's the basis for a mistrial,
12 you can make your motion, as well. Do whatever you want.

13 MR. NITZE: Your Honor, I'm going to clarify the
14 record briefly.

15 THE COURT: Yes.

16 MR. NITZE: I take the points -- while I disagree
17 with it -- about the objections to the PSR. But there is also
18 a letter that is submitted by Mr. Walker's attorney. I'm not
19 talking about the jail letter about snitching. I'm talking
20 about a separate letter.

21 THE COURT: What's snitching?

22 MR. NITZE: What is snitching?

23 THE COURT: Have you ever heard of that term before?

24 MR. NITZE: I have, your Honor. So, telling on.

25 And this letter affirmatively states that "The

1 defendant pleaded guilty to participating in a drug conspiracy
2 with others charged herein." That's not a failure to object.
3 That's not adoption by silence. I mean, that's an affirmative
4 statement by a man's attorney which is inconsistent with what
5 he said on the stand. I don't plan to reference it in
6 closing. Maybe this is all beside the point at the moment.
7 That's the letter we're talking about.

8 THE COURT: What I am saying is, if the defense
9 wants an instruction about it, if the defense believes it was
10 not appropriate, they can request an instruction. They can
11 include case law. They can identify why that may have been an
12 error, even if it's not reversible error, all right. And so,
13 they can do that tomorrow. That's tonight's project.

14 MR. ARIAIL: Your Honor, just to fill out the
15 record, there was testimony by Mr. Walker that he sat down and
16 consulted with Mr. Siegel when he drafted the letter, and
17 there were specific objections that he -- sorry -- there were
18 certain aspects of the PSR that he took exception to, so
19 that's clear.

20 MR. SOLOWAY: He objected, Judge, to being an
21 enforcer for Mr. Herron. He objected to having a gun at
22 Mr. Herron -- this is just my recollection. I have not read
23 the letter in a long time. He certainly never admitted --
24 what Mr. Nitze just said doesn't mean that he admitted that
25 Mr. Herron was involved. The fact that Mr. Siegel may have

1 referenced -- I forget exactly the way Mr. Nitze phrased it.
2 There was no admission that Mr. Herron was the head of this
3 hierarchy. There was no admission about that.

4 THE COURT: The problem is, he pleaded guilty to a
5 conspiracy, didn't he?

6 MR. NITZE: Yes.

7 MR. SOLOWAY: Yes.

8 THE COURT: Except there were no coconspirators,
9 apparently. He did it all by himself?

10 MR. SOLOWAY: He didn't say that, Judge.

11 THE COURT: Did he say that?

12 MR. SOLOWAY: He did not. I'm sorry, your Honor, he
13 did not say that.

14 THE COURT: I'll go back and look at the transcript.

15 MR. SOLOWAY: His plea, he was asked, Did you
16 conspire with others?

17 THE COURT: I didn't take his plea.

18 MR. SOLOWAY: It was a Magistrate Judge. It was
19 Magistrate Judge Carter at that time.

20 MR. ARIAIL: The government is ready, your Honor.

21 (Pause.)

22 (Jury present.)

23 THE COURT: Please be seated.

24 Rebuttal?

25 MR. ARIAIL: Yes, your Honor. The government has

1 one stipulation that it seeks to read at this time.

2 THE COURT: All right.

3 MR. ARIAIL: "It is hereby stipulated and agreed by
4 and between the United States of America by Assistant United
5 States Attorney Shreve Ariail, Rena Paul and Samuel Nitze and
6 the defendant Ronald Herron by his attorneys Robert Soloway,
7 Esq. and James Neuman Esq., that:

8 "1. In order to qualify for the appointment of
9 counsel in a federal criminal case under the Criminal Justice
10 Act, a defendant must fill out an affidavit stating that he or
11 she does not have funds available with which to retain his own
12 lawyer. The Court retains authority to revoke an appointment
13 of an attorney under the Criminal Justice Act should there be
14 a finding that the defendant doesn't qualify.

15 "2. Government's Exhibit 1502 is a true and
16 accurate copy of the plea minutes related to the defendant's
17 2002 conviction for criminal possession of a controlled
18 substance in the third degree, a Class B felony."

19 And at this point, I'll read certain effects of that
20 allocution. When the defendant was asked if he sold drugs out
21 of 130 3rd Avenue, the defendant said, no. And when asked
22 what he was doing in the location, the defendant first stated
23 that he was only responsible to watch this lady's kids. Later
24 in the allocution, the defendant pled guilty, and stated that
25 he seen drugs there at the apartment and that he knew there

1 was drugs in the house and also who brought drugs there into
2 the house.

3 "If called to testify, a representative of the New
4 York State Department of Corrections would state that between
5 January 30, 2003 and August 9, 2006, the defendant was
6 sanctioned for twenty-three total disciplinary actions related
7 to various violations of the rules of inmate conduct of the
8 New York State Department of Corrections.

9 "These violations resulted in various penalties,
10 including loss of good time, as well as the defendant
11 sentenced to over fifty-five months in various Special Housing
12 Units within the state's prison facilities.

13 On January 30, the defendant was sanctioned for
14 fighting and refusal to obey a direct order.

15 "On March 6, 2003, the defendant was sanctioned for
16 his possession of materials related to an unauthorized
17 organization and failure to follow the rules for prison
18 correspondence.

19 "On April 2, 2003, the defendant was sanctioned for
20 smuggling and failure to follow the rules of prison
21 correspondence.

22 "On April 18, 2003, the defendant was sanctioned for
23 his involvement in violent conduct and his participating in an
24 unhygienic act.

25 "On April 21, 2003, the defendant was sanctioned for

1 his possession of materials related to an unauthorized
2 organization.

3 "If called to testify, a parole officer with the New
4 York State Department of Corrections and Community Supervision
5 Board of Parole would state that on April 25, 2003, during a
6 parole interview at the Lakeview correctional facility, when
7 asked about his conviction in connection with his arrest in
8 130 3rd Avenue, the defendant 'denied possession of any drugs
9 found in an apartment [which he said] belong[ed] to a "lady"
10 who allowed [the defendant] to stay in her apartment on
11 occasion.'

12 "Additionally, the defendant stated that [a]t the
13 time the police executed a search warrant...[he] was there to
14 baby-sit the owner's children, ranging in age from one and a
15 half to nine years [old].' The defendant also [stated] that
16 the owner of the apartment was a drug user and he indicated
17 that all of the drugs belonged to [her].' The defendant also
18 noted that 'he was present at the time the police arrived at
19 the apartment and that the owner was out at the time' and
20 therefore, he believed that that is the reason why he was
21 charged with possession of the drugs and weapons.

22 "During the same interview, the defendant
23 admitted 'to prior involvement in the Bloods gang,' but denied
24 current involvement in the gang, 'report[ing] that he joined
25 the gang at fourteen but walked away at about sixteen or

1 seventeen.' He advised that he left the Bloods because he
2 'saw a fellow friend and gang member killed 'over that
3 nonsense.'

4 "On May 5, 2003, the defendant was sanctioned for
5 his possession of materials related to an unauthorized
6 organization.

7 "On July 11, 2003, the defendant was sanctioned for
8 interference with staff.

9 "On November 1, 2003, the defendant was sanctioned
10 for possession of unauthorized medicine.

11 "On November 6, 2003, the defendant was sanctioned
12 for possession of contraband.

13 "On December 18, 2003, the defendant was sanctioned
14 for refusal to obey a direct order and obstructing visibility
15 in his cell.

16 "On December 29, 2003, the defendant was sanctioned
17 for violent conduct, refusal to obey a direct order and
18 failure to follow the rules related to inmate movement within
19 the prison.

20 "On April 3, 2004, the defendant was sanctioned for
21 possession of contraband and refusal to obey a direct order.

22 "On April 7, 2004, the defendant was sanctioned for
23 possession of contraband and smuggling.

24 "On April 12, 2004, the defendant was sanctioned for
25 possession of contraband and failure to abide by mess hall

1 regulations.

2 "On April 30, 2004, the defendant was sanctioned nor
3 refusal to obey a direct order.

4 "On 6, 2004, the defendant was sanctioned for
5 refusal to obey a direct order and failure to follow rules
6 related to inmate movement within the prison.

7 "On September 15, 2004, the defendant was sanctioned
8 for possession of a dangerous weapon and smuggling. If called
9 to testify, an officer with the New York State Department of
10 Corrections would state that he found a one and a half inch
11 cutting instrument with a handmade sheath wrapped in plastic
12 wrap and part of a latex glove which was inside of the
13 defendant's mattress.

14 "If called to testify, a parole officer with the New
15 York State Department of Corrections and Community Supervision
16 Board of Parole would testify that during a parole interview
17 at Lakeview correctional facility on May 13, 2005, the
18 defendant denied his guilt in connection with the 2002
19 conviction related to his arrest in 130 3rd Avenue. The
20 defendant denied 'possession of drugs which were found in the
21 apartment [which he said] belong[ed] to a 'lady' who allowed
22 the defendant to stay in her apartment on occasion.' The
23 defendant told the parole officer that 'he was there to
24 baby-sit the owner's children' and that when the 'police
25 arrived the apartment...the owner was out at the time.' The

1 defendant told the officer that 'he believ[ed] this is the
2 reason why he was charged with both the drugs and the
3 weapons.'

4
5 "On May 5, 2006, the defendant was sanctioned for
6 smuggling and possession of an item in a prohibited place.

7 "On May 7, 2006, the defendant was sanctioned for
8 violent conduct and assault on prison staff.

9 "On July 26, 2006, the defendant was sanctioned for
10 smuggling and failure to obey prison rules on correspondence.

11 "On August 9, 2006, the defendant was sanctioned for
12 his involvement in violent conduct, assault on an inmate,
13 refusal to obey a direct order of staff and refusal to accept
14 a double cell assignment. If called to testify, an officer
15 with the New York State Department of Corrections would
16 testify that on June 23, 2006, 'while making rounds,' he
17 approached the defendant's 'cell and observed' the defendant
18 'standing in front of his cell window blocking [the officer's]
19 view of the cell interior.' After issuing 'several direct
20 orders [to the defendant] to step away from the window' of the
21 cell, the officer 'observed [the defendant's cell mate] lying
22 on the floor bound [with his] wrists [tied] behind his back,
23 his 'ankles' tied together and 'gagged' in his mouth with bed
24 sheets.

25 "For the remainder of his term of prison, the

1 defendant was incarcerated in a Special Housing Unit."

2 This stipulation, which has been marked for
3 identification as Government's Exhibit 1501, is admissible as
4 evidence in the trial of this case.

5 The government offers 1501 and 1502.

6 THE COURT: Any objection?

7 MR. SOLOWAY: No objection.

8 THE COURT: All right. Government's Exhibits 1501
9 and 1502 are received in evidence.

10 MR. ARIAIL: And the government rests its rebuttal
11 case, your Honor.

12 THE COURT: Very well.

13 Members of the jury, at this time, the parties have
14 completed their presentation of evidence in this case and at
15 this time we will have closing arguments.

16 The government will give its argument first.

17 MR. NITZE: Thank you, Judge.

18 Good afternoon. When I stood here before you a few
19 weeks ago, I showed you these photographs -- of Frederick
20 Brooks, of Richard Russo, of Victor Zapata -- and I told you
21 that these men are dead, cut down during the prime of their
22 life -- their lives, because Ronald Herron, the man sitting
23 across the courtroom murdered them in cold blood.

24 And now that you have heard and seen the evidence in
25 this case, you know that that's true. These aren't just

1 abstract faces, abstract names, words from a lawyer standing
2 in a courtroom.

3 You know what happened. You've been here for the
4 better part of a month. You've listened to sixty witnesses.
5 You've looked at countless exhibits. You've seen the lobby
6 where the defendant shot Frederick Brooks in the face. You
7 heard from the witnesses, including Darnell Saunders and Amber
8 Hudson about what happened in that lobby. You can picture
9 what happened. You've seen the elevator where Richard Russo
10 was murdered, where the defendant shot him in the head and
11 left him to die on the elevator floor.

12 You've heard about how the defendant left after the
13 Russo murder, went to Flatbush, got rid of the weapon, changed
14 cars. You know what happened. You've seen the defendant
15 threaten to murder Victor Zapata and you know why. You heard
16 him threaten to put him in a cemetery, and you saw the
17 chilling video of the defendant making good on that promise,
18 chasing Zapata from the lobby of 185 Nevins Street, gunning
19 him down as he ran, and finishing him off with a bullet to the
20 head.

21 At the start of this trial, we told you that the
22 evidence would show that Ronald Herron created and ran a
23 violent criminal enterprise, a crack dealing enterprise, in
24 the Gowanus and Wyckoff Housing Projects. You're now familiar
25 with those places. You've seen the map -- you've seen the

1 maps many times. You've seen witnesses drawing their routes.
2 You know what we're talking about.

3 You know that Ronald Herron found people he could
4 manipulate, threaten, coerce into doing his bidding, people
5 who looked up to him, people like M Dot, who testified from
6 the stand this morning. More on him to come.

7 We told you that Ronald Herron values money and
8 power and respect above all else, certainly more than he
9 values other people's lives. We told you that the evidence
10 would show that he committed murder, attempted murder and
11 robbery, that he sold crack cocaine and heroin, that he and
12 his henchmen carried and used firearms. We told you that we
13 would prove his guilt beyond a reasonable doubt, and that is
14 what we have done.

15 Based on the evidence before you in this case, the
16 testimony of the witnesses, exhibit after exhibit after
17 exhibit, we submit this is not a close call. This is not a
18 close case. The evidence of guilt in this case is
19 overwhelming.

20 Now, for running, creating and running his criminal
21 enterprise for the crack and heroin dealing, for the murders
22 of Brooks and Russo and Zapata, for the guns, for the
23 violence, the defendant is charged in a twenty-one-count
24 indictment. And as you no doubt saw for yourselves, the
25 evidence didn't come in in neat, tidy, chronological steps

1 with notes explaining how it all fits together as it came in.
2 And that's part of the point of a closing argument, a
3 summation.

4 There may have been times during trial when you
5 wondered why you were learning about a particular vehicle or a
6 particular date, a particular street corner, a particular set
7 of associations. And I'm going as to spend some time now
8 walking you through each count of the indictment and how the
9 evidence fits those charges. And obviously I'm not going to
10 go through all of the evidence that you heard and saw. We
11 would be here for another month. It's going to be a summary.

12 My job today is to pull it together, explain how it
13 fits together with the charges, and make a note of anything
14 you want to see as you deliberate. I'll provide transcripts,
15 pages number as I go, the best I can. I'll refer to exhibit
16 numbers. And you can ask to look at those exhibits, to read
17 transcripts. You're also free to ask for testimony from a
18 particular witness or for testimony on a particular topic,
19 large or small.

20 Examine the evidence. Bring it back into the jury
21 room with you. You will be instructed by the judge that my
22 arguments, what Mr. Soloway says in summation and Ms. Paul
23 says in rebuttal, that's not the evidence. The evidence is
24 the testimony and the exhibits, and that's what you are to
25 base your verdict on.

1 At the end of the arguments, before you deliberate,
2 you'll have instructions on the law as Judge Garaufis has
3 indicated to you, and he'll tell you what the government has
4 to prove in order for you to find the defendant guilty. And,
5 of course, if I say anything about the law here that differs
6 from what Judge Garaufis ultimately tells you during the
7 charge, of course, what Judge Garaufis says controls. But I'm
8 going to spend some time walking through the charges to frame
9 the evidence for you.

10 As you know from the beginning of the case, from
11 opening arguments, this is a racketeering case, and the first
12 two counts of the indictment are racketeering and conspiracy
13 to commit racketeering, and I'm going to start there.

14 The crime of racketeering is essentially the crime
15 of committing a pattern of related crimes in the service of a
16 criminal organization or enterprise. And here, the enterprise
17 that is charged is the Ronald Herron enterprise, and there are
18 five elements that we must prove to establish guilt, proof
19 beyond a reasonable doubt for you to find the defendant guilty
20 of the racketeering charge that's Count One.

21 And just to briefly summarize the evidence before I
22 go through them. First is that an enterprise as described in
23 the indictment existed on or about the time alleged in the
24 indictment.

25 Did the Ronald Herron enterprise actually exist?

1 You'll have the indictment language before you, Judge Garaufis
2 indicated. You'll have the jury charge with you, so you'll be
3 able to refer to that. The enterprise engaged in or its
4 activity affecting interstate or foreign commerce. The
5 defendant was employed by or was associated with the
6 enterprise. The defendant knowingly conducted or
7 participated, either directly or indirectly, in the affairs of
8 the enterprise.

9 And finally, that the defendant, in his
10 participation, in the conduct of the affairs of the
11 enterprise, did so through a pattern of racketeering activity,
12 and that's what I was talking about just a moment ago. That's
13 a pattern of crimes that are related to each other and also
14 related to this criminal organization.

15 I'm going to walk through these in order. You'll
16 see that some will require more of your attention than others.

17 We'll start with the first one, and this is that an
18 enterprise as described in the indictment existed on or about
19 the time alleged in the indictment. Here, the enterprise is
20 alleged to span from 1998 until the defendant's arrest in
21 October of 2010. And you'll be instructed that this doesn't
22 have to be a formal organization. They are not filing
23 incorporation documents. They don't keep minutes. This is
24 not an organization that has business cards, as you might
25 imagine.

1 The Ronald Herron enterprise is called that for the
2 purposes of the indictment, because that's what it was. It
3 was an association of people with a structure. People played
4 roles that reported to him. It was his enterprise.

5 And you'll be instructed that over time, the
6 enterprise, its makeup can change. Personnel can come and go.
7 Some people leave. Some people come in. In this case, the
8 enterprise -- the indictment charges the enterprise is a gang
9 comprised primarily of individuals residing in and around the
10 Gowanus Houses that included members of the Bloods street
11 gang, who have engaged in drug trafficking and acts of
12 violence, including murder, attempted murder, robbery,
13 extortion and assault.

14 So, let's start at the beginning. These are the
15 earlier years of the enterprise starting in 1998. That's when
16 the defendant returns to the Gowanus after his time in
17 juvenile detention -- you heard some testimony about that from
18 the defendant himself and from others -- until July 12, 2001.
19 Just to orient you, that is the day he's arrested, a month or
20 so after the murder of Frederick Brooks. He's holed up in a
21 stash house Saquan Wallace put him, Apartment 7C in 130 3rd
22 Avenue.

23 There's a search warrant executed. The police
24 arrive. They finally find him there. There are little kids
25 there with him, and there's crack cocaine, and the .38 caliber

1 revolver. That's the revolver that Saquan Wallace gave him.

2 And you'll recall that after his arrest, because
3 he's found with those drugs, he's brought from the 78th
4 Precinct to the 76th Precinct, and that's when Darnell
5 Saunders and Amber Hudson, who have picked him out of a photo
6 book, do an actual lineup. They catch him a month later.
7 Here, they pick him out of a live lineup, and he's charged
8 with the murder, and that then results in the trial, the
9 witness intimidation, his acquittal. He pleads to the drugs
10 and he goes to prison. I'm racing through that. I'm going to
11 spend lots of time on the Brooks homicide. I'm telling you
12 that now, to orient you in time. What I am focusing on right
13 now is just the time period, we're talking about 1998 until
14 that arrest in July of 2001.

15 And here, you should remember what the defendant
16 himself has conceded both in opening arguments, through
17 stipulation, and in his own testimony from the witness stand
18 during this period. He conceded that during this period, he
19 was a drug dealer, he carried guns, he did all this in the
20 Gowanus and the surrounding areas.

21 You had testimony from Angel Figueroa, who told you
22 a few days ago that in 1998, when he came back to Apartment
23 4E, that's when he's with his cousin, Tom Tom, Naquan King.
24 He talks about other people who are with him there, Nesto, Big
25 Head D. He has ready access to guns. They are selling crack.

1 He's going to Washington Heights to get resupplied. Angel
2 Figueroa is selling for him.

3 This is from the defendant's direct examination.
4 There's a transcript cite there, page 3468. "I bought my own
5 drugs. Sometimes we would all travel, depending on who needed
6 to recoup, re-up, you know, but for the most part, we all
7 bought our own drugs."

8 And who is "we"? "Depending. Just people who are
9 around selling drugs in the building, whether it be my cousin
10 Naquan, Tom, my friend D, my friend Nesto."

11 "So, during this period, did you learn how to do
12 this?

13 "Yes, I learned pretty earlier on when I was 14,
14 but I didn't do much for a long time at that age. When I got
15 to be sixteen, I did a little more."

16 Sixteen, that's starting this period we're talking
17 about. He's starting to deal drugs in earnest. He has Angel
18 was working for him. Has people in the apartment, his
19 mother's apartment, 4E, who have guns that he can use.

20 He was arrested in that apartment with his mother
21 and with Angel. That's, you know, from the stipulation and
22 also from Detective Fazzingo, who testified fairly early on.
23 This is where they find the Mach 11 semiautomatic machine
24 pistol in the flower pot. The clips are behind the couch.
25 There's

1 a .38. There's lots of bagging material for narcotics. And
2 that's a couple of weeks after Detective Fazzino saw the
3 defendant toss a different .38 caliber revolver in the grass.

4 Angel Figueroa was selling the defendant's drugs.
5 He's there when they go to resupply in Manhattan, and Angel
6 told you that how at this time, he's not satisfied with just
7 being there in 423 Baltic.

8 (Continued on next page.)

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1 MR. NITZE: (Continuing)

2 With the small time operations he's got going. So
3 he starts to expand, to 427 Baltic, 198 Bond Street. All of
4 that is happening during this early period.

5 You have testimony from Darnell Saunders, you
6 remember Darnell. He testified in great detail about the
7 Brooks murder. He's the man who was in the lobby with the
8 defendant when the defendant shot Frederick Brooks. Darnell
9 also gave testimony about these early years. He knew the
10 defendant. They went to school together. There is testimony
11 about that.

12 Darnell testified that as he was selling crack at
13 198 Bond Street, Herron was selling at 423. He had Tom-Tom
14 and a guy named Angel selling drugs for him. That's at page
15 723 in the transcript. That's Angel Figueroa who you also
16 heard from. He also testified that Rafael Gonzalez, Feo,
17 began to sell for him at this time.

18 The defendant goes to Rikers Island. He's arrested.
19 He's in C-74. That's the cell block. And he testified, the
20 defendant, that this is where his Bloods affiliation starts to
21 gain strength. He actually ends up running a committee. He's
22 becoming a powerful force in the Bloods while he's in prison.
23 As you know, the Bloods and the Murderous Mad Dawgs are in
24 part -- that provides him with personnel and with some of the
25 structure of his enterprise.

1 The enterprise is not charged as a formal Bloods
2 set. That's just part of it. As you will see, there are all
3 kinds of other people that he employees and uses but that's --
4 that's an aspect of it, his involvement with the Bloods.

5 Vincent Winfield, Dipset, who you also heard from,
6 he testified about this period of it also. He worked for
7 Herron. He would sell drugs for Herron. You heard from
8 Saquan Wallace about Herron's activities during this period.
9 This was Saquan Wallace who testified early early on. I am
10 guessing some of his testimony was fairly seared in your
11 memories. It was dramatic testimony and he -- powerful
12 testimony, I should say, and he held Herron down, as they put
13 it. This was the time when Wallace would go from Wyckoff with
14 Herron to 423 Baltic and help him collect money from his
15 sellers. He carried a gun in case something happened.

16 At least three times he did that, from 423 and 198
17 Bond, which is entirely consistent with what the other
18 witnesses said about these early years, that he starts in 423,
19 his base of operations, where he grew up, where his mother's
20 apartment is, and he expands into 198 Bond, which is where
21 Brooks is ultimately murdered.

22 You heard about Trinny, a guy named Trinny who
23 Saquan Wallace described as Herron's right-hand man, his
24 partner in crime. That's at transcript 1005. That's in the
25 middle of the Wallace testimony.

1 The defendant himself admitted to being around
2 selling drugs at the time of the Brooks murder, which you know
3 is in 2001.

4 Now, at this time, around the time of this shooting,
5 in June of 2001, how are you supporting yourself at that time,
6 that specific time?

7 I was selling drugs.

8 And where, specifically?

9 A little bit everywhere.

10 He's expanding.

11 Of course, you have the stipulation and testimony
12 about the arrest that I just talked about in July of 2001,
13 where he's found with all that crack cocaine. He's found with
14 a .38-caliber revolver. He pleads guilty to felony drug
15 possession and you have his own testimony, as I say, about the
16 Bloods.

17 So Angel, Feo, Dipset, Quan, Tom-Tom, other workers,
18 sources of supply in Washington Heights, ready access to guns,
19 a Bloods affiliation, the structure of the Bloods, this is the
20 beginning of the Ronald Herron enterprise. It's not fully
21 mature at this point. But that's what it is. People have
22 roles and he is finding his place at the center of this
23 organization.

24 Then he goes to prison and that's where in the fable
25 that the defendant has put before you undergoes a

1 transformation, where he reforms himself. And that is
2 nonsense, as you know, because the evidence proves that it is
3 nonsense.

4 Starting with the stipulation that was just read
5 into evidence about the type of activity the defendant was
6 involved in in the prison during this supposed transformation,
7 violence, smuggling, gang activity, tying a bunky up with
8 sheets in his mouth. More on the supposed transformation
9 later but that's what's going on in prison and the enterprise
10 continues. He continues to build it there. You have evidence
11 about the continuation of the enterprise through this period
12 of incarceration.

13 You learned from Rafael Gonzalez, that's Feo, that
14 soon after his arrest the defendant reaches out to Gonzalez
15 from Rikers Island. He's not in prison yet -- he's in the
16 jail -- to continue to collect his money from 198 Bond Street.
17 There is testimony about the defendant using one of his
18 girlfriends to reach out to Feo to collect that money.

19 You learned how from jail he carries out
20 obstruction, the obstruction that would ultimately let him
21 beat the murder charge in the state court, the obstruction
22 that resulted in the intimidation of Darnell Saunders and
23 Amber Hudson, and was the reason they didn't testify, which I
24 will talk some more about when I get to that murder.

25 You also learned that Herron used his position as

1 someone who had beat a body to enhance, to build up his status
2 in the prison, his renown. He was emboldened ut by what he
3 had pulled off and he starts to plan for his return. He
4 crosses paths with Feo. He crosses paths with Vincent
5 Winfield, Dipset. They are in that holdover custody together
6 as they are being transported. He evaluates Dipset to see if
7 this is a guy who can help him when gets back to the street.
8 And he can't. He does, as you found out.

9 You heard that Herron reached out to Crystal Lewis
10 through a friend and asks her to come visit him. Why? Well,
11 because Crystal Lewis is a pro and she sells in Gowanus and
12 she sells in Wyckoff. You might infer from the fact that he
13 is trying to get her to come visit him, although she doesn't
14 make it out to prison, that he is looking toward building
15 workers, a crew of workers as well, and that would prove to be
16 a good choice later. We will get into the narcotics activity.
17 You know Crystal Lewis was a busy worker as a crack cocaine
18 dealer.

19 And, of course, you have the evidence that the
20 defendant's ties to the Bloods only deepened. You saw
21 exhibits of letters he wrote from the facility. You saw
22 worldwide lineups, which you heard a fair amount about from
23 various witnesses, where the hierarchy, the positions, the
24 leadership of the various sets are sent out through the
25 prisons so there aren't -- there isn't confusion about

1 authority, structure, who is supposed to listen to who.

2 Caraballo learned of it. Winfield learned of it.

3 This is just a blown up portion of one of those
4 lineups. This is from the document that Crystal Lewis
5 provided the government. He gave it to her when he inducted
6 her into the Bloods, but you can see Ra Digga is listed there
7 as one of the generals and this is the sort of the lineup that
8 you heard testimony about going throughout the prisons. This
9 is Murderous Mad Dawg, Blood, a/k/a Frank Matthews, the
10 godfather, is Soul B.

11 So the enterprise continues. He lays the groundwork
12 to expand it. He still has people working for him. The
13 personnel is changing somewhat. Then he returns to the
14 streets with a vengeance. Here the enterprise grows and
15 matures and its means and methods are refined, put it that
16 way, making money through drug sales and robberies and
17 intimidation and violence and evading the authorities.

18 By the time he comes home, the competition is gone.
19 Remember, at this point the federal authorities have locked up
20 Bam and Crime and Cheeb. You heard a fair amount about these
21 older figures from the neighborhood, who in 2000 and 2001 were
22 the most powerful dealers in the Gowanus.

23 By 2006, Saquan Wallace and his twin brother are
24 locked up. They are gone from Wyckoff. And just as Herron
25 tells Winfield at the Auburn depot when they are there

1 together, there is no one there has the neighborhood in a
2 grip. It's open market. Perfect time to come back and do
3 this.

4 Joseph Garcia, you may remember, Jo-Jo he went by,
5 he testified. You heard lots of testimony about him. He told
6 you a bit about how the defendant went about reasserting his
7 control. He's in the lobby, in 423. He's about to go to a
8 club with his friends and he gets robbed at gunpoint. The
9 defendant and two of his guys show up, put a gun on Jo-Jo,
10 take his earrings, his \$600 in cash, which you know he had
11 from drug proceeds. At that point they are selling however
12 they want to sell.

13 And after that happens, Jo-Jo testified he goes
14 upstairs to the twelfth floor, to get high. Maybe he's
15 stressed out about what just happened. The defendant comes
16 back up and he explains hey, it wasn't personal. But I put a
17 lot of work into that building before I left and we are not
18 having it like this anymore, none of this free-lancing. I'm
19 back. This is my spot. You are with me or you're not here.

20 This is from Garcia's direct testimony, 1,300 to
21 1,301 in the transcript.

22 We had a conversation about what took place in the
23 lobby. He let me know it wasn't personal. He ain't like all
24 the free-lancing that was going on in the building. As far as
25 the drug selling and explained to me how, you know, he had to

1 put a lot of work in for the building and he didn't like
2 everyone free-lancing, doing they own thing.

3 Question: And you mentioned that he put a lot of
4 work for the building. Can you explain what you understood
5 that to mean?

6 Answer: Whatever it is that, you know, people got
7 to do to have a territory in the project. You know, beat
8 somebody up, you know, whatever it comes to.

9 You know what it comes to. We are going to get to
10 it.

11 Garcia left, scared, but he comes back. He starts
12 selling drugs with a guy named Loco and eventually he gets
13 into some trouble with the defendant and before long Garcia is
14 selling directly for the defendant and he becomes a good
15 worker. He pays on time, gets the money up. And we will get
16 into that. But you know Jo-Jo and his folks in apartment 7-B
17 are moving a lot of the defendant's crack cocaine, with
18 Verdreea, his cousin Musa Marshall, Crystal Lewis sometimes.

19 After that robbery, Garcia told you no one else
20 could sell and that conversation on the twelfth floor, no one
21 else could sell in 423 unless they are affiliated with the
22 defendant or they would face quote any type of bodily harm.
23 To be honest, he said, I couldn't tell you what would happen
24 because nobody crossed that line. Nobody crossed that line
25 because people knew that who this guy was, what he had done.

1 He beat a body. And he used that reputation to cement his
2 control.

3 By 2008 you've got Tyhe Walker also known as G-I-B,
4 Guy in the Bushes. His brother M-Dot, you heard from him this
5 morning.

6 You heard from Rafael Gonzalez who is now out of
7 jail at this point as well, selling in 423, 198 Bond Street.
8 He runs into Herron on the street and he's very excited. It's
9 over, he says, meaning we are going to do this. Now is the
10 time. He's hoping he's going to get a better position. I
11 think you tell from Mr. Gonzalez that he has intense loyalty,
12 you might call it a type of worship. He is enthralled with
13 the defendant. This is a witness who can't read. And he
14 doesn't end up with more responsibility. He ends up huffing
15 and puffing 24 hours a day in the lobby of 423 Baltic Street,
16 slinging crack cocaine, day in, day out, as a worker. But
17 he's there.

18 You heard testimony from him about the defendant
19 giving him a test. This has to do with Astro or Stro, a guy
20 who is getting supplied on the side, which is not allowed, not
21 supposed to happen. And the defendant hears that Stro has
22 been snitching. He knows what snitching means. You know what
23 snitching means. M-Dot knew what snitching means.

24 So they pistol whip him and take him into the
25 stairway and they beat him in the head with a gun, kick him

1 down the stairs and drag him back up again and pistol whip him
2 some more and they beat him and he leaves and he doesn't come
3 back. And you know why he doesn't come back.

4 You learned that Herron did follow up with Crystal
5 Lewis. He finds her, wants her to start selling crack
6 cocaine, which she does. You heard detailed testimony from
7 her about that, started out with \$500 at a time, 70-30 split.
8 She keeps 150 of the 500. He gets 350. She goes back to him
9 to get resupplied, there she is in the lobby selling again.
10 You saw her on tape, the undercover videos of Crystal Lewis
11 selling to the undercover officers.

12 This is the enterprise at work. This is the Ronald
13 Herron enterprise. This is people who sell, people who hold
14 him down, muscle, enforcers. That's how he makes his money,
15 that's what he does.

16 As Vincent Winfield put it, people just fell in
17 line. That's the transcripts at 1819.

18 Now, you know Jo-Jo wasn't the only person he
19 robbed. You heard about robberies up in Wyckoff from numerous
20 witnesses, including Crystal Lewis, Yahadin Halloway who goes
21 by China. This is the person who is in her apartment with a
22 baby and other little kids when Herron and Moose and Winfield
23 show up with masks and guns looking for Smurf. She testified
24 that she saw the robberies by Herron's people. So did
25 Crystal.

1 You heard Saquan Wallace's testimony on this period
2 and that's also instructive, or, rather, excuse me, his
3 testimony about how these drug operations work. He had his
4 own with his twin brother, violent, ruthless, cruel. Told you
5 about stash houses, about people moving product and money
6 around. He told you about wearing bulletproof vests, the
7 roles the people played, shooters, workers. He gave you a
8 little overview of how a crack dealing enterprise works and it
9 looks like an awful lot like the one you have with this
10 defendant. He told you about fear, about making examples of
11 people, about how beating a murder case made him untouchable.

12 Herron set up a similar operation. He called the
13 shots. He put in work himself, of course, but he also
14 assembled a crew.

15 So let's recap some of who they are. You've got
16 enforcers and muscle. Vincent Winfield, Dip or Jorge Mejia,
17 that's Moose. I am not going to summarize the testimony about
18 those people or many of these others because you heard it over
19 and over, consistently, from witness after witness.

20 Cakes, M-Dot. M-Dot is the guy who you heard from
21 this morning, who would have you believe that he is just kind
22 of a buddy of the defendant and his crack cocaine conspiracy
23 with some other people and he wasn't involved. And you know
24 that's preposterous based on all of the evidence that you have
25 heard in this case.

1 Jo-Jo and Crystal, talked about them. Feo, Tyhe,
2 that's G-I-B. These are crack dealers. This is the group in
3 apartment 7-B, Verdreea Olmstead's apartment. Rizzle,
4 Randolph Joseph, you heard about him from the undercover who
5 sold to Rizzle. You know that Rizzle is Randy, the friend of
6 Musa. Musa talked about him. Algenis Caraballo, who ends up
7 driving the defendant around. Diane Flowers, helps him get
8 rid of weapons, support staff you might say.

9 Bloods, there is Herron, Tyhe, M-Dot, Moose,
10 Crystal, Dipset, Feo, Cakes, Buck whose picture is not up
11 there but Buck is the guy in East New York. He ends up over
12 there after more than one of his crimes to lay low, to find
13 cover.

14 These enforcers, Moose and Dipset, Cakes, eventually
15 M-Dot, you heard lots of testimony about that. Musa called
16 M-Dot the muscle. This is Musa Marshall who -- tall thin guy.
17 He's out working in a liquor store right now. He's got
18 children. Both his parents pass away. He doesn't have
19 violent conduct in his -- he has a cooperation agreement but
20 doesn't have violent conduct there. We are going to get into
21 credibility of witnesses, but ask yourself whether this is a
22 guy who is going to spin some yarn about all of this. I
23 submit, he is not.

24 You know that Herron was arrested on October 5, 2010
25 with M-Dot in a car with a gun, in the glove compartment, this

1 nine-millimeter, with a longer clip. You heard lots of
2 testimony about that gun.

3 You know that the defendant has acknowledged he was
4 a Blood. You've had testimony from Musa Marshall and Joseph
5 Garcia and Crystal Lewis and Vincent Winfield and Rafael
6 Gonzalez and jail letters and I'm sure I'm skipping some
7 things, all about -- I should say, defense witnesses from this
8 morning, M-Dot, Shondell Walker, Smurf, everybody acknowledges
9 and says under oath that the defendant was in the Murderous
10 Mad Dawgs. He was a Blood. You know he's a leader of that
11 organization.

12 He gives Crystal Lewis, Government Exhibit 1315.
13 This is the Mad Dawg history. It's got the code words. Code
14 words for criminal conduct, by the way, which you don't need
15 if you are an organization that's here to help and provide
16 business classes.

17 There is his tattoo, if Ra ruled the world above the
18 Blood sign. That's on his arm.

19 There he is flashing gang signs. There he is with
20 Murderous Mad Dawgs. There he is flashing the Blood sign.

21 And here, to round things out on the enterprise,
22 this -- these are telephone calls and this is an important bit
23 of evidence. The phone activity, there is a stipulation in
24 evidence about these phone numbers. These are contacts
25 between the defendant and the people in his enterprise. They

1 don't have his phone records, obviously. They couldn't know
2 that the phone records are going to reveal this, but you
3 should look at that stipulation. It's Government Exhibit 601.
4 It talks about the dates of these contacts, which are from
5 2008 to 2010 from various periods.

6 That's an enterprise. Ronald Herron is talking to
7 Joseph Garcia 1,245 times over that timeframe. Not because
8 they played ball together sometimes and he kind of knows
9 Joseph Garcia through Al Harrington. He's a guy he saw around
10 but because Joseph Garcia works for him.

11 He's not talking to Crystal Lewis 281 times, to
12 Mr. Walker 455 times, et cetera, et cetera, because these are
13 folks he just kind of new from back in the day and are around
14 in the neighborhood. No. He's calling them and they are
15 calling him and he's keeping tabs on them just like they all
16 said, because they work for him, because they are in the
17 Ronald Herron enterprise. That's what these people are,
18 that's what they do. Overwhelming evidence of it.

19 The enterprise, as I said, is charged as a gang
20 comprised primarily of individuals residing in and around the
21 Gowanus Houses. That included members of the Blood street
22 gang, who have engaged in drug trafficking and acts of
23 violence, including murder, attempted murder, robbery,
24 extortion and assault. That element is proved beyond a
25 reasonable doubt. Check. You know the enterprise existed.

1 Now, we turn to number two, the enterprise engaged
2 in, or its activities affected, interstate or foreign
3 commerce.

4 This element is not really in dispute. You have a
5 stipulation that guns used in connection with the enterprise
6 were manufactured outside of the State of New York, which
7 means they traveled into the State of New York. You have
8 testimony from Detective Charles Martello. He was the
9 detective with the short gray hair, I waved at him through the
10 window there. He explained that cocaine -- your common sense
11 may tell you that cocaine is not grown and manufactured in the
12 State of New York. It's manufactured in South America. That
13 means it traveled in interstate and foreign commerce. You will
14 be instructed that the effect on interstate commerce can be
15 minimal.

16 That element is also met, proved beyond a reasonable
17 doubt.

18 Number three, that the defendant was employed by or
19 was associated with the enterprise.

20 This just means that if you find that the enterprise
21 existed and was established, you have to find that the
22 defendant was a part of it and this is not a case where we are
23 dealing with somebody at the outskirts of an enterprise who
24 may or may not have been part of the enterprise. If you find
25 that the enterprise existed, which we have proven it does,

1 this element is not going to take a lot of work because it's
2 the Ronald Herron enterprise.

3 Number four, the defendant knowingly conducted or
4 participated, either directly or indirectly, in the conduct of
5 the affairs of the enterprise.

6 Here too, when we get into the crimes committed on
7 behalf of the enterprise, this will be sort of obvious. But I
8 am going to pause for a moment on this element.

9 The instructions you will receive will indicate to
10 you that you don't need to exercise significant control. You
11 don't have to play an important role in the enterprise. But
12 here again we are dealing with its leader. And before I move
13 on to the next element, I am going to talk about some ways in
14 which the defendant led and was involved in the affairs of
15 this enterprise outside of the context of the particular
16 crimes that we have charged in connection with that. This is
17 important evidence because it provides further proof of the
18 existence of the enterprise but also of its means and its
19 methods, its modes of operation, how this enterprise
20 functioned, the relationships of trust among the people in the
21 enterprise.

22 This is Vincent Winfield. I have talked about him
23 already. You heard him testify at great length. He might
24 have been the longest witness you heard from. That's because
25 he was close to the defendant for his time out on the streets,

1 for those five months or so, and he gave you some very
2 detailed testimony about how this all works.

3 He's the guy who filled -- filmed, excuse me, some
4 of the documentary style videos. He's the guy behind the
5 camera. You can actually hear his voice and you had testimony
6 that he is the one who filmed them. He's also responsible for
7 carrying weapons. He's the one who is arrested with this
8 little 22 Lorcin, the nine-millimeter he also had, skidded off
9 in the bushes. That was an icy day. We will get to that.

10 This is the one that Herron, the defendant, is with
11 at the Auburn depot. They are both in prison. They cross and
12 they are there together and Herron starts to recruit him and
13 asks if he is going to be able to help him out back on the
14 street.

15 Well, he does and he starts selling drugs but he
16 doesn't -- he realizes that's not for him. Moose is already
17 in place as the lieutenant. Cakes is home too. And Winfield
18 becomes like an enforcer or a bodyguard, a guy who is carrying
19 weapons, handling beefs and so on.

20 This is a period when Herron, the defendant's
21 control at the top of his enterprise is solid. His people
22 haven't been locked up yet. This is the period in 2008 and
23 following when you heard lots of testimony about this period.
24 He's got his workers. He's got his enforcers.

25 And Winfield told you that he put out the word. He

1 quote gave people an ultimatum. You cop your work from me.
2 You sell my drugs. There is no more doing shit on your own.
3 That's in keeping with what he did with Joseph Garcia, people
4 he robbed at Wyckoff, with his whole approach to getting this
5 community in his grip.

6 And it is soon after he returns that he pushes into
7 Wyckoff Gardens. You heard that Crystal Lewis stopped selling
8 for him briefly, just a period of days, and M-Dot shows up and
9 says -- M-Dot, the guy you heard from this morning, tells her
10 beat it. You can't be selling in 423 if you are not with me
11 and that all changes. She comes back into the fold.

12 You had testimony from Musa Marshall, again the tall
13 guy, cousin of Jo-Jo, nephew of Verdreea Olmstead, that when
14 he his friend Randy, Rizzle, this guy who is also selling in
15 7-B, he has a problem with some guys from Wyckoff who come
16 down and Marshall, Musa Marshall complains to Jo-Jo. The next
17 thing you know Ra Herron, the defendant, is down there saying,
18 you got no more problems. If you do. You let me know or you
19 let M-Dot know and we'll take care of it.

20 You know that Herron is the one who has the
21 authority, the power, to dead a beef, as the expression goes,
22 on the street. A beef, a fight, a dispute, that can cause
23 problems for business, that can cause friction in the
24 neighborhood. And he can go to somebody and say, no more.
25 That beef is over. Because I say so and he can put an end to

1 it.

2 You heard from Feo, from Rafael Gonzalez, that when
3 Herron took him under his wing, Herron explained to him when
4 you are walking with me, you don't got in problems.

5 Well, it wouldn't turn out that way for
6 Mr. Gonzalez, obviously. But you know what he meant.

7 Caraballo told you about Herron deading a beef for
8 him with D-Block. This is after a fight Caraballo told you
9 about, a number of odd and violent disputes and Herron put an
10 end to one of those.

11 You heard about the beef with Smurf and you heard
12 how -- that's Kendale Robinson, the guy who murdered a witness
13 who you heard from this morning, who laughed about that when
14 he was asked questions about it.

15 He -- he deaded that beef although that didn't work
16 out, which is why Dipset winds up chasing him and shooting
17 him. We will get to that in just a minute.

18 But this is what Winfield says about it. It's Ra.
19 He do -- we listen to him. It ain't just me. Other people
20 around us. They listen to him. If he say no, it's no. If he
21 says yes, it's yes.

22 It's like he boss. We got to listen to the boss
23 basically. That's just the way I'm putting it but it's paying
24 homey. He's the boss. We eating off him. Like he providing
25 stuff for us and fair play, part of that you don't want to be

1 on his bad side basically.

2 They are eating off him. He's giving them work,
3 their business. These folks aren't holding down regular jobs
4 and fair play, some clarity to the extent there is any on the
5 street, some places where you can sell, some places where you
6 can conduct this criminal business. That's what the boss
7 provides. That's the boss.

8 (Continued on next page.)

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1 (CONTINUING)

2 MR. NITZE: Remember the evidence you heard and here
3 again, this is not conduct that is charged as a separate
4 offense or as a Racketeering Act, but it is relevant for the
5 way this enterprise functions and the relationships of trust
6 and respect that these people have.

7 This shooting of Jarel Moore. This is the guy,
8 Vincent Winfield gets a tip that he can rob this guy, he
9 throws his keys, there's some little ruse and he goes and he
10 robs from him, he steals from him and it turns out he's
11 connected to people in Fort Greene and he gets in trouble.
12 And Herron is like, what are you doing robbing someone when
13 you don't know who they are and now I've got to deal with this
14 problem.

15 And Winfield explains Jarel Moore told me about
16 this, that I could do it and Herron says well, that's not how
17 things work and now I've got to settle it. And he calls the
18 people in Fort Greene and he basically puts it on Jarel Moore
19 and he says how do you want him; do you want us to kill him or
20 do you want us to tie him up and get him to you so you can do
21 what you want to do. They decide they're going deliver Moore
22 to Fort Greene and this is where you have the testimony about
23 them cleaning out the Navigator, duct-taping the back so we're
24 not going to have hair fibers or blood or whatever other mess
25 you might have when you tie somebody up to deliver them. This

1 is, by the way, 1881 in the transcript is near where this is.
2 1878 and 79 is where Herron gets upset that this has happened.

3 And so you've got D-Wild and Moose and Dick and
4 this guy Jarell Moore in the car and they give Jarell Moore an
5 empty gun so that he thinks that the ruse is that we're all
6 going to Fort Greene together to talk it over with the
7 Fort Greene guys. Of course that's not what's going to
8 happen. He gets wind of it because Winfield gets out to pee
9 next to the fence and D-Block comes out and does something
10 clumsy and approaches him. Remember Winfield testifying about
11 this? He's like what are you doing, get back in the car. And
12 anyway, Jarell Moore takes off and Winfield shoots at him and
13 the one gun jams, and he shoots at him again, and he hits him.

14 He goes to the hospital and the police see him in
15 the hospital and he doesn't want to talk to them because he's
16 maybe got other things going on that he doesn't feel like
17 sharing with the police. And this is all corroborated and I'm
18 going to be hitting on this theme, this point a lot, but you
19 had Mr. Broesche who came with his -- he lives in the
20 neighborhood. He happened to see the black SUV coming out by
21 the Gowanus after he hears these shots.

22 There's a little back and forth about well, didn't
23 he say it was a medium-sized SUV or was it a large, black SUV?
24 And I submit that doesn't matter because this guy is just
25 saying what he saw. It completely corroborates what you know

1 from Winfield happened, which is that a dark SUV Navigator
2 comes bolting out of there when Jarell Moore is not taken down.

3 You had Detective Meischner from the NYPD. He went
4 and interviewed Jarell Moore and he tells Meischner I'm not
5 talking to you. You have a stipulation, 1316-ST, which says
6 that on September 24th, 2008, while Jarell Moore is at the
7 parole office, this guy is on parole, the parole officer sees
8 the black Lincoln Navigator and she calls the police. And
9 that stipulation also explains that the Navigator is in the
10 name of Halima Whelless. You know who that is, that's Ronald
11 Herron's girlfriend.

12 Angel told you about that Navigator. He's kidnapped
13 in it. Dip Set told you about it, they keep masks and a bag
14 of guns in the back of it. Feo tells you about it. They use
15 it to drive after the Russo homicide to Diane Flowers where
16 they ditched the gun. And Halima Whelless, in whose name this
17 car is registered, also in that stipulation is putting money
18 in the defendant's account, visits him 14 times at Rikers
19 Island, she is tied to him. That is Ronald Herron at the helm
20 of his enterprise.

21 Here is a video clip, one of the documentary-style
22 videos that shows him talking about this, surveying his
23 terrain. And just to be clear about this point, which I will
24 come back to when I talk about the Defense case a bit. The
25 videos that were filmed to promote his rap career, the rap

1 music, that is not on trial here. You have overwhelming proof
2 beyond a reasonable doubt without those clips, but they are
3 telling because the way this defendant is trying to promote
4 himself is as the authentic guy from the street. And he talks
5 about what he's done and you know it's about what he's done
6 because it matches up with the other testimony that you heard.

7 You're not going to hear an argument from us because
8 it's not the argument that's being made to you and it's not
9 the point of this evidence that somehow this is generally
10 violent and offensive stuff and so, that's a problem for the
11 defendant. No. It's specific, very specific things that he
12 is saying to promote himself. And just because he happens to
13 be using it to promote his career doesn't give him a pass for
14 trying to exploit his crimes to make a name for himself.

15 You will evaluate the videos for yourselves just
16 like you will evaluate every other piece of evidence. That's
17 your job, but it is telling.

18 (Video plays.) (Video stops.)

19 MR. NITZE: It's not my hood like I'm from this
20 hood, it's my hood. I'm around surveying my terrain.

21 You heard from Dip Set Winfield about that, that's
22 actually what he would do, drive around make sure his people
23 are in place. So the defendant conducted and participated in
24 the conduct of the affairs of the enterprise. That much is
25 very, very clear, it's his enterprise. That leaves the fifth

1 element.

2 Did he, in the conduct of the affairs of the
3 enterprise, commit a pattern of racketeering activity? And
4 that's at least two of the charged Racketeering Acts committed
5 in the service of his enterprise. And this is just the way
6 this RICO or racketeering statute works. You're going to have
7 instruction on it, clear instruction from the Judge.

8 But basically, the indictment charges a set of
9 crimes: Conspiracy to distribute crack cocaine, the murder of
10 Frederick Brooks, the robbery of Joseph Garcia that I just
11 talked about. The conspiracy to distribute heroin, the murder
12 of Richard Russo. Murder and attempted murder of Kendale
13 Robinson, that's Smurf, and conspiracy to murder and the
14 murder of Victor Zapata and you, in order to complete -- to
15 find him guilty of racketeering on this fifth element, you all
16 have to unanimously agree on at least two of those, that two
17 of those were committed by the defendant.

18 And now, because the crime of racketeering is the
19 commission of the series, the pattern of acts for the
20 enterprise, that is the conduct that's criminalized, the
21 underlying crimes can also be charged and are in this case
22 charged as their own offenses, separate offenses. All of them
23 except for the Smurf, attempted murder of Kendale Robinson,
24 Smurf.

25 So, what I'm going to do is I'm going hold off on

1 checking the box on this last element because I'm going talk
2 briefly about Smurf because that's the only one of these
3 Racketeering Acts that's not also its own crime. And then I'm
4 going to get to the others as I walk you through the remaining
5 counts of the indictment and I'll circle back to this. But
6 once I am through, you will see that the all of these have
7 been committed and that will complete the racketeering
8 offense.

9 So, just to start with, Smurf, Kendale Robinson.
10 Again, that's the man who is doing prison for the rest of his
11 life because he murdered a witness. You saw him testify and
12 it's for you, part of your job in evaluating the credibility
13 of witnesses is to see how their stories check out, how they
14 match up to other evidence, but also the witness stand is
15 right there near you for a reason; so you can eyeball him and
16 see what you think and I submit he laughed when he was asked
17 about the murder of a witness.

18 A conspiracy is an agreement to commit a murder, an
19 attempt is taking steps toward committing it although it isn't
20 necessarily finished and that was the case here. He got shot
21 several times but didn't actually die; clearly, he was here in
22 the flesh. Vincent Winfield told that you there were problems
23 with Kendale Robinson and the crew in Gowanus. There was this
24 Wyckoff-Gowanus tension that you heard about in various
25 iterations throughout the course of the trial. This was the

1 testimony you heard about Smurf hitting Winfield's godbrother
2 and Herron debting the beef and I'm not going revisit all the
3 details of that back and forth. You can find the testimony on
4 this beef begins at 1835 in the transcript or you can just ask
5 for it if you want to see testimony about Smurf. But
6 essentially, he starts shooting up the area and Herron steps
7 in to debt the beef and when that doesn't work because
8 Mr. Robinson has a temper problem or something, we don't know
9 exactly why he comes back and it escalates some more, and
10 Winfield, he threatens to kill Herron. He makes threats and
11 Winfield, Dip Set goes to Herron and says we've got this
12 problem. Didn't work, we still have all this problem.

13 And as he explained at 1854 in the transcript, I
14 can't just take it on my own hand and just dictate something
15 on my own if at the end of day I'm under him.

16 You know that's true because you heard it from lots
17 of people. And so, Herron says he's got to go. We've got to
18 get rid of this problem and they go hunting for Smurf, hunting
19 for Kendale Robinson. And eventually they find him and shoot
20 him. Dip Set shoots him and you have testimony from Crystal
21 Lewis, by the way, you have testimony corroborating that, she
22 sees Dip Set running by with a gun and hears the shots on the
23 day that Smurf is shot.

24 But the most powerful corroboration of this story is
25 the time when they get into the Navigator with the guns and

1 the masks and they go up to what they think is Smurf's mom's
2 place to find him, and Winfield told you about this, they get
3 that kid outside the door to knock, they think the woman is
4 going to know him and open the door and they bust in and
5 there's a lady there with a baby and children in the
6 apartment, and they have masks and guns and they are asking
7 where is he, they're trying to find him, he's not there and
8 they leave.

9 And Winfield told you that was Herron, Moose, and
10 himself who were there. He told you about the masks that they
11 had and the specific guns that they brought. And the reason
12 that that is powerful testimony is because you know who the
13 woman was who lived there because she testified in court.
14 That's Yahadin Holloway. Chyna. She's not a cooperating
15 witness. She didn't want to be here, I submit you could tell,
16 she was here under subpoena. And she was in the apartment.
17 And what did she tell you? Three guys came in with masks and
18 guns and one was tall, one was medium-sized with dreadlocks
19 coming out the back and one was smaller. And they all had
20 guns and they said they're looking for Kendale Robinson.

21 Now, who do you think was tall, medium and small?
22 Just like Winfield told you it's tall, it's medium, this is
23 from Government's Exhibit 13, this is Moose, it's not that
24 clear but he's the with one with dreadlocks out the back.
25 Medium, you've seen pictures of Moose you know what he looks

1 like. And you saw Winfield on the stand, smaller.

2 And there's more because Holloway testified that she
3 told her friend Crystal Lewis about this and said she was
4 freaked out about what had happened and Crystal Lewis
5 explained that Holloway, Chyna, Holloway had come to her
6 hysterical crying and that afterwards she went to Moose and
7 asked Moose did you go up there. And what did Moose do? He
8 laughed. He didn't say no, didn't say what are you talking
9 about. He laughed.

10 Now, the Defense is trying, it seems, to make this
11 look like a personal beef. This is Winfield and Kendale
12 Robinson, this doesn't have anything to do with Ronald Herron.
13 Has to do with the godbrother, somebody dancing with
14 somebody's girlfriend this morning. That's nonsense and you
15 know it is because he's in a mask with a gun in somebody's
16 house looking for him. Why? Because it matters to him and
17 because he says what goes.

18 I'm going say more about the testimony of
19 cooperating witnesses later and about corroboration, but
20 that's what corroboration is. You have testimony from
21 Winfield but you have Chyna testifying. She has no dog in
22 this fight. She's in here to say what she saw. She's not
23 naming who it was, but it matches what you heard from the
24 cooperators and he couldn't know that she was going to come
25 and say that.

1 And another bit of corroboration. Winfield told you
2 that he had a nine, that Moose has a 45, I'm talking about the
3 calibers, a .9-millimeter, 45, and that Herron had a Glock 40.
4 Well, you know that Herron has a nine because he was arrested
5 with that. That's this one. And you know that Moose, at
6 least sometimes uses a 45, because he got arrested with one,
7 that's this one. And you know that Herron sometimes uses a 40
8 because Herron, as we'll talk about in a minute, murdered
9 Victor Zapata with a 40-caliber and the 40-caliber shell
10 casings were all over the Wyckoff parking lot. That's also
11 corroboration. So, that's Racketeering Act 6, the attempted
12 murder of Kendale Robinson and that is proved beyond a
13 reasonable doubt by the evidence I just described.

14 Okay. The second count is racketeering conspiracy
15 and I'm not going to spend a lot of time on this but
16 essentially if you find the enterprise and all the substantive
17 racketeering crime I described to you proved, well then
18 there's if you conspire to commit that crime, basically that
19 he conspires with another person to participate through a
20 pattern of activity, this racketeering activity, then this is
21 proven. You will have detailed instructions on it. Of
22 course, there are agreements which is what conspiracy is.
23 This is not drafting contracts or formal agreements. There's
24 not a file about this. It just means you talk on the phone,
25 you say let's do it, you ride around in a car, you hang out in

1 the 'hood, you make the agreements to do these things and they
2 can't happen without that because these are elaborate
3 multi-person crimes that are committed. So, that one is
4 proven.

5 Now, Count 3, conspiracy to distribute crack cocaine
6 which is also charged as one of the Racketeering Acts.

7 This count focuses on the crack dealing operation.
8 It's Racketeering Act 1 and worth knowing what the defendant
9 concedes, don't want to spend a lot of time going through the
10 early years but this conspiracy runs from '98 to 2010 and you
11 have the defendant's concession that is he's selling crack
12 cocaine in the projects in Gowanus during that period I talked
13 about earlier from '98 to 2001. He's arrested with crack
14 cocaine in the stash house that Saquan Wallace provides, he
15 pled guilty to that being his crack cocaine. There's a
16 stipulation about that.

17 He goes to prison and, as I just went through
18 before, he's keeping this operation up and running while he's
19 in prison. It's a set-back. It's a pause. And then he comes
20 back and it continues in earnest. And then you have Operation
21 Trident and here again, I don't think I need to spend a lot of
22 time on it, but this is the undercover buy-and-walk operation.

23 You saw videotape of the people in apartment 7-B
24 selling hand-to-hand crack cocaine. Verdreea Olmstead, Musa
25 Marshall, Joseph Garcia, Tyhe Walker. You have a stipulation

1 in evidence that shows, this is one page of it, but it's
2 actually many pages and it indicates who these undercovers
3 bought from, where and what quantities they purchased the
4 cocaine. That's 1100-ST and it's what brought all this crack
5 cocaine into evidence.

6 If you care to look at the crack cocaine that's in
7 evidence, all of this is can be -- and bear in mind, these are
8 the sales to two undercovers who stopped by to see what they
9 can do how and then to buy from these people. It's the tip of
10 the iceberg. They're selling crack every day in these lobbies
11 and buildings. So, while this is a fair amount of crack
12 cocaine, it doesn't scratch the surface of what is actually
13 being pushed into these neighborhoods.

14 You heard from the people who are involved in the
15 crack cocaine conspiracy, the people who sell, you heard from
16 Joseph Garcia. Crystal Lewis, Feo, Musa Marshall, you heard
17 from a lot of people and what they said about how this works.
18 It matches up, one witness to the other, and with what you saw
19 on tape. You know that they got resupplied by Ronald Herron
20 who had his own supplier somewhere. You know from Crystal
21 Lewis that when she's finished selling her 500, she gets on
22 the cell phone and she re-ups, she goes to meet him in the
23 hallway, she meets him. Sometimes it's they meet near
24 Desiree's apartment, more on her in a bit, that's Desiree
25 Taylor. This is the apartment the defendant basically took

1 over, painted red and kicked through his aunt's or Des's
2 aunt's stuff into the dumpster. He had a safe there.

3 You heard from Joseph Garcia that there were other
4 apartments they would go to. Heard from Vincent Winfield that
5 he's wheeling safes around in a grocery cart because they
6 don't want to get caught. You have a window into this from
7 Saquan Wallace, stash houses they keep moving, they're not in
8 one place all the time, lots of telephones, lots of changing
9 numbers. Crystal Lewis, I think on every video you saw is
10 like oh, yeah, I got to give you my new number. You know why
11 that is. Because they don't want to get caught.

12 You had testimony from Vincent Winfield that on one
13 trip to pick up crack cocaine from Herron's supplier he saw so
14 many bags filled with crack, each 6 by 8 inches, those are
15 large quantities of crack cocaine. When you look at these
16 dime bags they're not, these are small little bags. For ten
17 dollars each, you can imagine what a large brick of crack
18 cocaine would sell for.

19 You know that as part of this crack cocaine
20 conspiracy he needs to maintain control, location matters.
21 This fits in with all that I was telling you before about the
22 enterprise, but this is just one snippet from Musa Marshall's
23 direct, Ra told us it was going to be okay, if there were any
24 problems tell M-Dot. Did you tell M-Dot? We didn't have no
25 problems after that anymore. This is what I was talking about

1 earlier when the folks from Wyckoff come down and Rizzle is
2 selling and there are problems maintaining control,
3 maintaining a clear lobby, maintaining their customers. All
4 of this is part of the crack cocaine conspiracy.

5 You heard from Feo about his long days in the
6 buildings. GIB, Tyhe. Now, there was the hint of a
7 suggestion in the questioning from Defense Counsel that maybe
8 they're going to argue that Joseph Garcia is, in fact, the guy
9 who's running the show. You know that's not right for a
10 number of reasons. Not a single witness supported that
11 theory, first of all.

12 Musa Marshall said when he was asked who controlled
13 the drug dealing that it was his cousin Joseph Garcia. But
14 you know what he meant by that. He gets supplied by Joseph
15 Garcia but he went on to say that Garcia is supplied by Herron
16 and that was his testimony, that was just on the screen which
17 is if there's a problem, if you need to clear some people out
18 of the lobby, you get in touch with Herron's people, M-Dot,
19 and they'll take care of it.

20 You have Jo-Jo involved in hand-to-hand sales and
21 that's significant. You heard from Detective Martello and the
22 undercovers that the way a large drug organization works, and
23 this will make sense to you if you just apply your basic
24 common sense, is that the people who have the power are not
25 out shrinking these little bags of crack cocaine. They've got

1 other people doing it for them so they don't get caught. Or
2 at least so they can try not to get caught.

3 Take a look at Joseph Garcia --

4 Can you play this.

5 -- outside of apartment 7-B, cluttered apartment 7-B
6 with kids crying in there sometimes and Verdreea selling crack
7 on the bed and ask yourself if it makes any sense that Joseph
8 Garcia is the guy running the show.

9 (Video plays.)

10 MR. NITZE: Here he comes.

11 Okay, that's Joseph Garcia doing hand-to-hand with
12 the baseball hat on outside his aunt's apartment and you know
13 that that's not the guy running the show because there's all
14 these other people selling drugs who don't get it from Joseph
15 Garcia. He testified, as did the others, about Herron being
16 the supplier of those drugs.

17 Another clip. This is, before we play it, from one
18 of the Project Music videos and this is the scene where a
19 crackhead comes out of the lobby. It's like she's wandered
20 into this video that they're filming and you can see her
21 turning to Ronald Herron and asking where -- she needs her
22 drugs and she wants a discount and you just watch the
23 interaction. Watch who she's turning to, who she thinks of as
24 the person who's going get her the drugs and watch how Herron
25 handles it and interacts with Joseph Garcia and see if it

1 makes any sense at all that Joseph Garcia is, in fact, they
2 guy that's running the show.

3 Press play.

4 (Video plays.)

5 MR. NITZE: First of all, that shit's so good it
6 looks scripted. What does he mean by that? It's not
7 scripted. That's wild, that she came out, a real crackhead
8 and tried to get cocaine from me, perfect for my video, so
9 good it looked scripted.

10 But you can see, you can ask to see that again, you
11 can watch it as many as times as you like back there, that at
12 first he's kind of amused that this person comes up to him,
13 but then that's enough. He's being hassled. Where's your
14 stuff? You're going to make he sober. Where is my discount?
15 Jo-Jo, aren't you taking care of her, are you taking care of
16 her? It's a telling clip because she wanders into that scene
17 and she's real and you can see what's going on there, you can
18 see the power dynamic.

19 Now, to finish on the cocaine conspiracy. Desiree
20 Taylor's testimony is powerful. This is the woman who came
21 and testified about her apartment, she had an auntie she lived
22 with, she passed away. Herron comes and wants to have an
23 apartment there and he says he's going to talk to her about it
24 but, in fact, he shows up, and throws the stuff in the
25 garbage, paints the room red, and puts a lock and a peephole

1 and a flat screen and all that in the room?

2 And you remember her, she's had a hard go of it, I
3 think everybody could agree. But she sees more than once
4 cocaine on the table, a shape of a gun under a cloth, Herron
5 cooking on the stove in the way that she associates with
6 cooking crack cocaine. She sees Joseph Garcia show up with a
7 stack money and go into the room with Herron. Why? You know
8 why. Because he's got his hundred and he's coming to the boss
9 to give the boss the money. Not because he's some guy that
10 Herron knows from the neighborhood and played ball with a
11 couple times. Because he works for Herron and it's why the
12 other people show up in that apartment and that's why he's got
13 a lock, and a peephole, and a safe.

14 So that's Racketeering Act 3 and the cocaine
15 conspiracy proven. Overwhelmingly proven beyond a reasonable
16 doubt.

17 Count 4 is the unlawful possession of a firearm in
18 connection with that crack cocaine conspiracy. I'm not going
19 to spend a lot time on that. You know that in connection with
20 this crack dealing enterprise they used firearms, that Herron
21 himself used them. He used one to shoot Frederick Brooks in
22 the face, he used one to murder Victor Zapata, one to murder
23 Richard Russo. We've got guns on the table, three of them.
24 The one that Dip is arrested with, the one that Moose is
25 arrested with, the one in the glove compartment when the

1 defendant is arrested with M-Dot. We'll turn to this one at
2 the end. The guns they had when they went to Chyna's house
3 with the masks.

4 You heard about, from Crystal Lewis, about his
5 holster sometimes and others where she referred to herself as
6 that. You heard why he wants her to have it in her purse even
7 if he's playing ball or walking to the car. Because if the
8 police stop them A, maybe they're less likely to search
9 Crystal but B, if they do, it's not on him, he doesn't have
10 the gun.

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12 (Continued on following page.)

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1 MR. NITZE: That's what you get when you are the
2 boss. Somebody carries a gun around for you, if you want to
3 go play ball or go to your car.

4 Counts Five, Six, Seven and Eight are all related to
5 the murder of Frederick Brooks, and there's several different
6 theories of guilt here, all of them proved beyond a reasonable
7 doubt.

8 Before I get into the details of the murders, I'm
9 going to outline how those different charges work. The first
10 is murder in aid of racketeering, and that means it's a murder
11 committed for the purpose of maintaining or advancing your
12 position in the enterprise. You know that's why he did it.
13 Because he got some guy selling in the lobby that's not
14 supposed to be there. This is, in fact, a murder that makes a
15 big name for him and he can carry with him as a badge of
16 honor. He beat a body.

17 You have a drug-related murder. That's kind of
18 self-explanatory. You'll have instructions on it. Count
19 Seven not a murder charge. It's the use of a firearm in
20 connection with a murder, similar to the one I described in
21 connection with the use of a firearm in connection with drug
22 activity, for a crime of violence, which is the murder and
23 finally causing death through the use of a firearm. Each of
24 these of different federal statutes. They all relate to the
25 same crime. I'm treating them all together.

1 Let's talk about the murder of Frederick Brooks.
2 This is when he takes his first irreversible steps away from
3 being a small-time guy and small-time violence, because he
4 takes the life of another human being. He's not content to
5 work with his family in 423 Baltic. He wants to work at Bond,
6 and in order to assert that, he has to assert his control, put
7 in his work, as they say.

8 I'm going to spend some time on the evidence that
9 shows that he shot Frederick Brooks in the face. He shot him
10 again and again and again.

11 Darnell Saunders. He testified on the very first
12 day of trial. He's the guy in the lobby with him during the
13 murder of Frederick Brooks. He's the guy who was in prison
14 for selling drugs in Sullivan County. His girlfriend is Amber
15 Hudson, who is in the pickup truck and can see the murder
16 through the window.

17 He told you how it happened. It's early in the
18 morning on June 16, 2001, 2:30 in the morning or so. He's
19 there to meet Amber. They are in the pickup truck. He pulls
20 up in front of 198 Bond, and there is Herron, the defendant,
21 and there is Brooks, who he knows as Bishop. Saunders also
22 knows Herron from growing up. They went to school together.
23 You have testimony about that.

24 And there's an argument going on. Darnell Saunders
25 is also dealing crack cocaine at this time, and he knows that

1 Herron is making his move on this lobby, and so it doesn't
2 take him long to figure out what's going on in this argument.
3 Herron doesn't want this guy there. This is a new face.
4 Somebody new to the neighborhood. He has family in the
5 building.

6 Unlike Darnell, who you had testimony from, his
7 family goes way back. He probably has a little more leeway to
8 be selling there, but not this guy Frederick Brooks.

9 Darnell gets out of the truck and tries to calm
10 things down. He tries to explain that Bishop's family lives
11 in the building. We had testimony about he's the grandson of
12 Spoon, who lives in the building, and Herron says, I don't
13 give a fuck whose grandson he is. He's not going to be
14 selling drugs in this building. That's from page 731 in the
15 transcript, starting at line five.

16 Herron gets Brooks to join him in the lobby, and
17 Darnell follows, and he pleads with Herron, Don't do it.
18 Linda Pack, the older lady who lived in the building at that
19 time, who also came down, she heard the pleading for him to
20 stop and heard this defendant say, Mind your own business.
21 And then the murder happens. He pulls his gun out of his back
22 pocket, he takes him by the neck and puts him to the mailbox
23 and shoots him in the face, and he drops and shoots him three
24 more times and he leaves.

25 There is Frederick Brooks, eighteen years old, with

1 a bullet through his face. There's Frederick Brooks rolled
2 over after the crime scene people arrive. The drugs from his
3 pocket. The blood on his body from shots to the head and to
4 the neck and to the back.

5 You heard from the medical examiner -- and he can't
6 tell you, not what they do. You heard from all the medical
7 examiners. They can't tell you the sequence of shots. You
8 know the sequence, because you heard more than one witness
9 testify about the shots to the face first. That's the only
10 wound that has stippling, which you heard was like a gun
11 powder residue that means the weapon was as close as ten
12 inches, and that matches perfectly with what you heard. Then
13 you have a shot in the neck, the back, and the back of the
14 head, which is from the picture you just saw. It doesn't
15 matter which one of those three came in which order. You know
16 they came after the shot to the face.

17 You can look at the medical examiner's report. It's
18 Government's Exhibit 201 evidence. You can ask for the
19 medical examiner report. Darnell runs out of the building as
20 soon as he hears that first shot. He hears the others. He
21 gets in the truck and they leave.

22 And that day, he and his girlfriend, Amber Hudson,
23 that day go to the precinct and independently they pick out
24 Ronald Herron from the photo books. Detective Wayne Billups,
25 long-time detective, testified about that procedure. They

1 don't go in the same room together, and they pick him out of
2 the photo books.

3 Now, before I get to the rest of the aftermath of
4 the murder, I want to talk about Amber Hudson's testimony,
5 because it matches up with Darnell Saunders's testimony. You
6 may remember she had a yellow ribbon in her hair, and she came
7 in and testified there, and, I submit, you can see how scared
8 she was sitting on that witness stand. That's for you to
9 determine, demeanor and how these witnesses are as they
10 testify. She's a civilian witness. She testified under
11 subpoena. She's got no deal.

12 There are a few things she didn't remember, you may
13 recall, if she was inside the truck or outside the truck, and
14 which corner they went around. And that makes sense, because
15 it's thirteen years ago. She remembers seeing a guy, that
16 man, shooting Brooks in the face while her boyfriend, eventual
17 father of her child, is standing there next to him.

18 Now, just briefly in case you are wondering whether
19 she could actually see through that window. As you may have
20 gathered, that was the point of Detective Martello standing
21 behind the witness chair. And I walked through that doorway,
22 and there's a stipulation now in evidence that said it's
23 sixty-six feet from the lobby window to the curb, and I put
24 myself -- there's testimony in the record about it --
25 sixty-six feet through there, lights on in here, some light in

1 there, and Detective Martello testified that he can see me
2 waving perfectly fine. He can see who I am.

3 That window is, I don't know, half the size of the
4 window in the lobby door. That's also in the stipulation, the
5 dimensions of that window. And you may have had the
6 experience of driving home at night or past houses at night
7 with lights on inside. It is easier, not harder, to see into
8 a lit window when it is dark outside. The light illuminated
9 what is through the window, and you are in the darkness, and
10 it's 2:30 in the morning, and you have a testimony about a
11 lobby light. And more on that. This is the lobby, and, your
12 Honor, if I could have the lights dimmed just for this point?

13 There are these posters here on the wall. Now, this
14 is the door is over here, the mailboxes are here, and you've
15 got these posters on the wall, and you look. There's a dark
16 bar on the top of this one on the right, and there's some dark
17 boxes on this third one over here. And this is a shot taken
18 by the crime scene folks from the curb, and it might look like
19 this is blocking the window, but actually, if you look, and
20 you can take this exhibit, we have the glossy photographs that
21 you can look at, there are the dark on that one poster. This
22 here has dark on the top of the other poster.

23 What you are seeing through that window there is the
24 far wall through the lobby. I submit to you -- this is where
25 I get to what I submit to you.

1 You also have Detective Billups, who, as he was
2 investigating the case, he heard from Amber Hudson that she
3 seen it through the window, and he testified he went to check
4 it out for himself. He went out there, and he testified, yes,
5 you can see through the window.

6 Take all of that together, and I submit there's no
7 question that Amber Hudson could see through that window,
8 especially because she's watching the whole thing. Darnell
9 Saunders is a larger man and not tall, and Ronald Herron is
10 tall, and she sees them go into the lobby. So, she has these
11 two people, one of them she knows very well, in her sight as
12 they enter and then she watches the murder.

13 Darnell Saunders is also corroborated by Linda Pack.
14 I just mentioned her. She hears the voices. She recognizes
15 Raheem, as she calls the defendant. She knows him from the
16 neighborhood, and she knows Darnell.

17 There was some confusion in her testimony. You can
18 read it. There was the janitor's closet. There was some
19 cross-examination about a door. There's more than one
20 stairwell. But she doesn't have a deal, and she says that she
21 heard Darnell telling Raheem, Don't do that, man. I know his
22 family. And Raheem responded, Mind your business. She hears
23 the shot and she bolts.

24 She goes up to her apartment and looks out her
25 window and sees the defendant walking out, walking. And that

1 timing makes sense, because you know that Darnell Saunders
2 left after the first shot. So, if Pack runs and Saunders is
3 out behind her, you have testimony about him coming out of the
4 back door. By the time she gets upstairs, Herron, who has
5 finished shooting before, is walking out, smart walking, not
6 running, and she sees him coming out.

7 And you have the crime scene sketch here, which
8 shows these two stairs, what she testified about. She comes
9 down here at first, and then she testified that you can come
10 to the second floor and go over here and wind up here, looking
11 into the lobby.

12 Now, she mentioned seeing Lydia and her cousin. You
13 may have remembered there's this moment at the end where she
14 said she saw somebody else there. You have from Rafael
15 Gonzalez where Lydia lives, and it's over here, and -- you
16 could infer that she comes down here first, where she said she
17 did. And saw Lydia there, and even while she's here, she can
18 see across to Lydia here, which anybody here would not be
19 seeing, especially if they are facing the mailboxes where the
20 murder occurred.

21 You can look at this sketch. You can compare it to
22 her testimony. As I say and I said it many times, all
23 evidence is available to you. She winds up here.

24 This next photograph shows the view of this door,
25 and this is the back stairway where Darnell runs out back to

1 the truck on Bond Street. You have the map that shows that.
2 So, this is the view of the doorway where she comes down, and
3 she says she sees them in the lobby and takes off.

4 Rafael Gonzalez saw it from a different vantage
5 point altogether, and that provides corroboration. He's
6 outside. Gonzalez is trying to make a good impression on
7 Herron at this point, considers him an older brother. One
8 night, Herron appears to him out of nowhere. There's
9 testimony that somebody says, There goes your father. People
10 refer to him as "your father," sort of teasing him, because
11 he's so in a thrall of this guy.

12 He hears shots, and what does he say he sees?
13 Darnell Saunders running out yelling, This guy's crazy, this
14 guy's crazy, and Amber Hudson screaming in the pickup truck,
15 and they take off.

16 Rafael Gonzalez, there's no evidence in the record
17 to suggest that Rafael Gonzalez and Amber Hudson have somehow
18 put this together. Rafael Gonzalez on Darnell Saunders: The
19 reason it fits together is because they are testifying about
20 what they saw and it matches up.

21 Saquan Wallace has also provided corroboration of
22 the aftermath of the murder. You've got Herron coming to him
23 and saying he needs muscle, the kind that Wallace was ready to
24 provide, and that he needs to take care of this guy Fred, that
25 Frederick Brooks.

1 And instead, Wallace says, Sure, I'll do it, I'll
2 kill him. Knock his block off, I believe it was, knock his
3 head off. And then Herron does it himself.

4 And then he comes back and says he needs a different
5 kind of help. He needs a gun, first of all, and a place to
6 lay low. He gets a .38 revolver, and he gets to apartment 7C.
7 Saquan Wallace told you all of that. You know it's true,
8 because the police showed up, and what do they find? He's in
9 Apartment 7C, and there's a .38 revolver.

10 Now, Saquan Wallace described that apartment to you.
11 You can pull his testimony, and there's in, by stipulation, a
12 diagram of the apartment that the police made afterwards, and
13 it's the same. Saquan Wallace knows what that apartment is,
14 because it's his stash house, like he said it was.

15 A little more on the Brooks murder on obstruction.
16 You heard that when Herron was arrested, Darnell and Amber
17 were rushed to do the lineup. Again, Detective Billups
18 testified about the lineup procedures. They find people who
19 look similar, and they picked him out of this lineup, and he's
20 charged with murder.

21 Darnell Saunders gets a phone call in the park,
22 Herron on the line. O gives the phone, and Herron says, Why
23 are you snitching on me.

24 There's another time he hears gunshots he thinks are
25 for him and his son, and he leaves and hasn't been back since.

1 He goes to the Bronx with Amber Hudson, and the state murder
2 trial is approaching, and he finds them again and calls them
3 again. There's testimony in the record about this, and they
4 refuse to testify. They won't do it.

5 And you had important testimony from the Assistant
6 District Attorney Karen Bennett about what she heard and saw
7 when she comes down there. They are having a material witness
8 hearing to see what's going on with these witnesses who won't
9 testify.

10 And what does Darnell Saunders do? This was
11 admitted for a limited purpose, which is to show the state of
12 mind of Darnell Saunders. What was his state of mind? He was
13 weeping and saying, I have a family, and I won't do it. I
14 won't be looking over my shoulder the rest of my life.
15 Crying. Why? Because he's scared of the man who shot
16 Frederick Brooks in the face, and he's not going to take a
17 chance. That's the transcript at 1185. I can't live the rest
18 of my life looking over my shoulder and getting shot at with
19 my son. You have to understand, I have a family. I have a
20 family. I can't testify. I have a family. And he's crying.

21 The trial comes and goes, and the defendant gets
22 away with murder.

23 Now, I suspect there may be some attack on
24 Mr. Saunders's credibility. I submit the interlocking
25 testimony that I have just described, in addition to the fact

1 that this man is in the courthouse weeping with fear for his
2 family, his demeanor on the witness stand, all of those things
3 show that he told you what he saw, and that Darnell Saunders
4 didn't shoot Frederick Brooks in the face. He told you why
5 it's different this time. Why he was there in the chair. I'm
6 a little older now. I have a family of my own. I have four
7 daughters, and I need some closure to my life. I've been
8 holding onto this for like thirteen years. You know what I am
9 saying? So it was like it's a little burden off my shoulders.
10 Also, if something was to happen to my daughters, I would want
11 justice. Transcript 739.

12 He would want justice. And that's why we're here.
13 This time was different. This time, Darnell Saunders sat in
14 that chair, federal court, and testified, and Amber Hudson sat
15 in that chair in federal court and she testified.

16 Saquan Wallace, Rafael Gonzalez, they testified that
17 the defendant murdered Frederick Brooks and shot him in the
18 face, in the back, in the neck, he left him on that floor to
19 die, and got away with it. He's guilty of that murder. He's
20 guilty of Counts Five, Six, Seven and Eight and Racketeering
21 Act Two.

22 Counts Nine and Ten charge robbery of narcotics
23 proceeds and the use of a firearm in connection with that
24 robbery. This is the Joseph Garcia robbery. I already told
25 you about that. You have heard testimony from Joseph Garcia

1 about that robbery. It's corroborated, and fits completely
2 with the other testimony you've heard about, how the defendant
3 reasserted his control over this project, these housing
4 developments, his crack cocaine business, when he came out of
5 prison.

6 It's corroborated by Crystal Lewis, who explained
7 that's how he asserted control. It's corroborated by Vincent
8 Winfield, who explained that's how he took control. By China.
9 By Saquan Wallace. Guns, fear, control. You have evidence to
10 show that, Counts Nine and Ten. The defendant is guilty of
11 Counts Nine and Ten, and that's also Racketeering Act Three.
12 The heroin conspiracy, this count alleges a heroin conspiracy
13 covering most of the calendar year of 2008 and goes into
14 December of 2008. There was less testimony on this. It was
15 not the heart of his drug dealing, clearly. Crack cocaine is
16 the core of Ronald Herron's drug dealing enterprise.

17 You have testimony from Crystal Lewis that she sold
18 heroin she got from Moose in 2008 -- that's at 2333 -- and
19 Angel Figueroa, who was kidnapped by the defendant, so he
20 could be put to work paying back his debt, was given heroin to
21 sell, not so he could make any money for himself, but so he
22 can pay back Ronald Herron, and he was arrested with heroin.

23 You don't have to have a huge, massive drug-dealing
24 operation to be guilty of a conspiracy to distribute drugs,
25 although you do have that with respect to crack cocaine. You

1 have to have an agreement with others to distribute heroin,
2 and that's what you have here in 2008. That's Counts Nine and
3 Ten -- excuse me. That's Count Eleven, and Racketeering Act
4 Four.

5 Now, we get to the murder of Richard Russo. Here
6 again, it's charged in several different ways. This is Counts
7 Twelve, Thirteen, Fourteen and Fifteen. Just like the Brooks
8 murder. I'm not going to go through all those different
9 forms. It's a murder in aid of racketeering. It's a
10 drug-related murder. It's a murder committed with a firearm.
11 And there's a firearm count, not a murder count, but a
12 separate firearm count, which is using a firearm in connection
13 with the murder.

14 Feo Gonzalez told you that the defendant's violence
15 continued after Brooks and after he came back, and there's
16 this guy Richard Russo who ends up in the lobby of 423 Baltic
17 and he's not falling in line, and he's saying he's not scared
18 of the defendant, and he doesn't really see what the big deal
19 is with this guy. He's a talker. He's a drunk. He's a
20 junkie. You know he's a junkie from the substances, several
21 of them found in his blood in the toxicology report. And you
22 know he has a big mouth because of what happened to him.

23 Gonzalez told you that he knew of Russo before he
24 first saw him that spring in 2008. He heard that his brother
25 got into an argument with him about the stereo, you may

1 remember. The volume was too loud. It's a bit of a sideshow.
2 It's obviously not why he died. But you know something about
3 him.

4 Gonzalez comes back and he sees him, and he's still
5 talking about -- he's talking about Herron. You know your' re
6 man. And Feo Gonzalez says, I'm like, Who you talking about?
7 He was like the big dude, Ra. Every time you come around
8 here, people act like they are scared of him. If he confronts
9 me one day or crosses the line, I'm going to kill him. That's
10 what he said about Ronald Herron. He walks to Tyhe Walker,
11 GIB and says, I'm going to get a gun. I want to shoot him,
12 kick him out of the building. Not kill him.

13 Tyhe Walker says, Be cool, don't do that. A couple
14 of days later, Russo brings it up again and says, I'll kill
15 him. Gonzalez, speaking from experience, says, You can't talk
16 like that. You're going to get yourself into trouble talking
17 like that.

18 Of course, that's what happens. The morning of the
19 murder, you've got maybe a fairly typical morning for these
20 folks who are selling crack cocaine. They are in the lobby.
21 They are high. They have been up all night. They are selling
22 crack. They are getting calls to leave and coming and going
23 and they are drinking. And Herron shows up.

24 Joseph Garcia testifies that he also sees Russo and
25 Gonzalez hanging out in the building not long before the

1 murder. Then he goes back upstairs. Having seen Herron,
2 Russo turns to Feo and says, There goes your man.

3 And as Herron comes into the building, he talks to
4 Gonzalez, and he doesn't know exactly what's going to happen,
5 Gonzalez, but they go into the elevator. Herron takes him
6 into the elevator and tells Russo to go into the elevator, and
7 that's where the murder happens. And you have detailed
8 testimony from Rafael Gonzalez about the murder of Richard
9 Russo. He is shot in the head, crumbles to the floor of the
10 elevator, and he dies on the elevator floor.

11 Gonzalez turns to see what happens, and the
12 testimony, Ra Diggs with his eyes wide open, like he seen a
13 ghost, like you see the devil in him. And Gonzalez turns to
14 his left and he sees that. He sees Richard Russo with a
15 bullet in his head and blood coming out onto the elevator
16 floor.

17 Gonzalez is trying to figure out how -- he's
18 worried, first of all, that he's in trouble, because he didn't
19 report this sooner. You heard his testimony about what he
20 does. He takes the gun, they drive away to get rid of the
21 murder weapon. They get in the Lincoln Navigator. Herron
22 stops off at Subway, so Herron can have a sandwich, and they
23 go to Flatbush to a woman's house that Gonzalez didn't know,
24 but who you know is Diane Flowers. They get rid of the gun.
25 It's on Caton Avenue. She takes the gun from Gonzalez and

1 wraps it in cloth. Herron washes his hands in the sink. He
2 leaves the Navigator and he gets into Diane Flowers's car, and
3 that is important, because -- I'll get to that in a moment.

4 Now, let's talk about corroboration of Rafael
5 Gonzalez. This is the story about the Brooks murder, matches
6 up with independent evidence, as I just said. Amber Hudson
7 screaming about the pickup truck.

8 From the Brooks homicide, also, he talks about that
9 stash house 130 3rd Third Avenue. He goes there to get drugs,
10 selling crack. That matches up with Saquan Wallace.

11 Now, we're on Richard Russo, and there's testimony
12 about how the murder happens. Matches up with the medical
13 examiner. That's Dr. Sharlet. She's from Haiti. She had a
14 little accent. You may remember her. Her medical examiner
15 report is in evidence.

16 Russo's blood had alcohol and narcotics, just like
17 Gonzalez told you. He described how the elevator, the blood
18 was in the elevator. He doesn't have the crime scene photos.
19 That's exactly how the body was.

20 And then Diane Flowers, you learned from Winfield,
21 which Gonzalez couldn't have known, they go to her house to
22 pick up a bag full of guns, including the .22 caliber Lorcin.
23 There's testimony from Winfield about that.

24 You have phone data. Remember the phone, what
25 Special Agent Perry told you. I'm going to be coming back to

1 him with pictures of the Zapata murder. You can pull his
2 testimony, his report that's in evidence. And those repoll
3 numbers you remember. There's a repole, and there's a way to
4 narrow down the numbers.

5 Zapata number, you have a much more specific area.
6 Even just the repole numbers, which is a collection of these
7 towers, indicates that Herron's number goes from the Gowanus
8 repole 272 to 18. That's the repole that covers Caton Avenue,
9 that matches up with the Flowers address.

10 How could Gonzalez possibly, if he's inventing that
11 story, how could he know the phone records are going to line
12 up with it?

13 And perhaps most fortuitous in terms of
14 corroborating his testimony, he says they go out there, they
15 swap cars, and that Ronald Herron leaves in Diane Flowers'
16 car, and leaves his Navigator there. That's Gonzalez's
17 testimony.

18 Well, it turns out Ronald Herron rear-ends somebody
19 on Fourth Avenue and Baltic Street, he in Diana Flowers' car
20 the day after the Richard Russo murder. How could Gonzalez
21 possibly know that? He's not in the car when that happens.
22 You have the insurance records that show it. Look at Exhibit
23 120-ST, that's the insurance stipulation, and the insurance
24 paperwork that comes in as 1301. He couldn't guess what that
25 paperwork says. He couldn't know that that accident happened.

1 It's there in black and white. Ronald Herron is alone in
2 Diana Flowers' car the day after the murder.

3 Joseph Garcia -- this is another little point of
4 corroboration -- Joseph Garcia goes upstairs after he heard
5 the shot. He tells you the next day he got a call, there's
6 testimony about this, he got a call from Ronald Herron. You
7 might think if Herron was not involved in that murder, a
8 murder of someone right in the elevator of the lobby where his
9 drug-dealing business goes on, he would be upset, because
10 that's going to bring a lot of heat, police, crime scene
11 people, detectives, people knocking on doors, all of which
12 happened.

13 Garcia told you, the law enforcement officers told
14 you. But he said he got a call from Ronald Herron, in which
15 the defendant said, You don't need to worry about moving the
16 drugs. There's going to be a lot of heat. Just basically
17 stay cool now, that his tone was calm. That's in the record,
18 that testimony. Why is his tone calm? His tone is calm
19 because he knows what happened, because he did it, and he's
20 just saying, Sit tight, folks with my crack until the heat
21 goes down, and then we'll start again.

22 And the phone records for May 10, 2008, this is
23 Government's Exhibit 600, which is an awful lot of phone
24 records, but you can ask for it and find this one, that's
25 Ronald Herron's phone number calling Joseph Garcia's phone

1 number on May 10, 2008 at 1:39 in the afternoon, the day after
2 the murder.

3 Just like Joseph Garcia said, we don't have a
4 wiretap. You can't hear that phone call. But that
5 corroborates what Joseph Garcia told you. That is the murder
6 of Richard Russo, and it's proven beyond a reasonable doubt.
7 All of that interlocking evidence shows you that it is so.

8 (Continued on next page.)
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1 MR. NITZE: (Continuing.)

2 Counts 11, 12, 13, 14 and 15, racketeering act five,
3 are therefore proven to you beyond a reasonable doubt.

4 Counts 16 through 20 are the murder of Victor
5 Zapata. He's charged with a conspiracy to murder Zapata, in
6 November 2008 until September 2009, and with the September 27,
7 2009 murder of Zapata, who is known as Macho from Wyckoff
8 Gardens. Macho, this is him without the skull showing from
9 when he was shot in the forehead.

10 Here again, conspiracy I mentioned to you and the
11 other counts are murder in aid of racketeering, the firearm
12 related murder, drug related murder. You'll have instructions
13 on how that all that works. But you know this is a drug
14 related murder because of the testimony you heard about Macho.

15 Here you learn that on November 9, 2008, Moose was
16 shot in Wyckoff Gardens. You heard a fair amount about this
17 shooting. Moose goes up there. He ends up injured. They go
18 to Lutheran Hospital and Herron wants revenge. His guy got
19 shot. They are going to go after these people.

20 Manny and Macho at one time were part of his crew.
21 There is testimony about them selling crack for him in
22 Wyckoff. They could be on this board for a period of the
23 enterprise but as you will be instructed, the personnel
24 changes. There are beefs on the street. People get angry
25 with each other. They are jockeying for territory.

1 At this point they shoot Moose. By the way, you
2 know why Moose goes up there? Because you have testimony from
3 Crystal Lewis that Manny and Macho tell her enough. It's here
4 or there. Wyckoff or Gowanus. And Lewis doesn't like that.
5 She is upset about it. It's her birthday. You will remember
6 the testimony. And Moose, who is a friend of Lewis,
7 confederate of Lewis, both working for Herron, goes to see
8 her. He finds out. He doesn't like that. So he goes to see
9 them and he gets shot. You know he is shot. You see him in
10 the hospital. I will show you the video in a moment.
11 Obviously, they are hunting for this guy. I am going to get
12 to the hunt.

13 Let's watch this video.

14 Here they're in the hospital. There is Cakes, there
15 is the defendant, and here is what happens.

16 (Video plays.)

17 There is Moose, shot in the hospital and that's an
18 extraordinary thing to see in many ways, I submit. But not
19 the sort of video you see every day, I submit. But it's real.
20 It was filmed. That's Moose in the hospital. They are
21 laughing a little bit but it's not a joke. Because you know
22 what happens.

23 The defendant said something about he's just
24 ad-libbing. That doesn't make any sense. The defendant is
25 supposed to be this reformed music rap artist trying to turn

1 over a new leaf and bring something positive to the
2 neighborhood and he's in here joking about putting someone a
3 cemetery after someone got shot? Frank Boys in the building,
4 that's code for Murderous Mad Dawgs. You heard that. It is
5 on that sheet that I showed you before with the lineup.

6 See you soon in a cemetery near you. And then they
7 hunt. They hunt for him. And Crystal Lewis told you that she
8 texts when she sees them and Jo-Jo told you that there is a
9 time when Cakes and Ra go up there and come back and Herron
10 says, I'm going to find him one of these days. Jo-Jo doesn't
11 know who he is talking about but he has an idea. It's in the
12 testimony.

13 Months go by. They are trying to find -- he's
14 trying to find a time to do this.

15 On October 7, 2008, the defendant is stopped by
16 Officer Ouk. He is wearing a bulletproof vest. Who wears a
17 bulletproof vest? Somebody who is in the middle of a beef,
18 that's who. Winfield wears bulletproof vests. Officer Ouk
19 said the only times he's ever stopped somebody with a
20 bulletproof vest are the times when it happened in connection
21 with this case, and one of them was when Herron had the
22 bulletproof vest on.

23 On December 21, 2008, they are looking for Macho and
24 Manny. They are both wearing vests. Herron has the Glock 40
25 in the glove box. Somebody calls the police. They are

1 looking for -- the cops are looking for them. They are in a
2 tan Acura this time. By the way, there are a lot of vehicles,
3 a lot expensive vehicles that you heard about in this trial.

4 Winfield jumps out of the passenger seat and he runs
5 and he throws a gun in the process. Officer Ouk arrests him.
6 That's when Winfield is caught. That's when he goes away.
7 That's when he's got this gun, the Lorcin, the 22.

8 Officer Ouk told you he recognized Herron because
9 he'd stopped him before wearing bulletproof armor.

10 In February of 2009, during a parole search of
11 Moose's house, there is a stipulation on this, they find the
12 45.

13 So the hunt is on and then, of course, you know he
14 finds him and he kills him. Let's talk about that.

15 Let's watch some of the video. We will start with
16 this one.

17 Can you play this?

18 This is during the -- Vincent Winfield told you this
19 is during that period of the beef with Macho.

20 (Video plays and stops.)

21 I will stop it there.

22 He doesn't care about some beef with a rapper.
23 These feuds you heard about from the expert about people are
24 getting into a feud. Is he real? He doesn't care about that
25 because he's got real beefs to deal with. That's what he's

1 sailing.

2 If you listen to it again, he doesn't care about all
3 that soft phony stuff because he's doing real work on the
4 street.

5 And here is the day, the night that Victor Zapata is
6 killed. He's selling drugs out in front of the building. You
7 can see him leave and then come back. You see him -- you
8 essentially see the murder.

9 Can we play this?

10 This, you will recall, is the surveillance video
11 from outside. There he is. There was testimony about this.
12 Leaving. Testimony from an officer who knows who he is.

13 (Video continues to play.)

14 Here he comes back. This is -- this is several
15 clips from, as you can see, from the various surveillance
16 videos. Here comes Victor Zapata back to the building and
17 here comes Ronald Herron to the door and then he sees him.

18 There he is and he chases him down.

19 You know his body is found out in that courtyard.
20 You know the 40-caliber shell casings are found in that
21 courtyard. You know that Victor Zapata is taken to the
22 hospital from that courtyard with bullet holes all through
23 him, including in his head.

24 Now, how do you know that that was Ronald Herron? I
25 guess the short answer is because you just saw it on the

1 videotape and I am going to talk a bit more about that video
2 tape, although that's not the only reason.

3 You had Angel Figueroa on the stand. He knows
4 Ronald Herron. He lived in the same apartment with Ronald
5 Herron back in '98 to 2000, that period. He knows how he
6 moves. You heard the testimony from the police officer that
7 sometimes they put these videos out because they are trying to
8 see if there is somebody who can recognize a person where a
9 stranger might not.

10 He was unequivocal. I know who that is.

11 But that's not all.

12 You know that Ronald Herron is six-foot-four inches
13 and you saw that Detective Martello went and took a
14 measurement of that door. That shot is in evidence. If you
15 look up toward the top above the window there is the black box
16 where six feet is and four inches above that. You know where
17 six-four is. That's up sort of between the window and the
18 joint, the elbow on the door, a little higher toward the elbow
19 on the door. That the where six-foot-four is.

20 You saw, and I am going to show you again, that the
21 defendant walks through and it's six-foot-four because you can
22 see the hood of the hoody is just below where six-foot-four
23 would be but his legs are not straight and he's not standing
24 up the way you would for a measurement. You can look at that
25 picture and watch the video for yourselves but the height

1 matches.

2 You also saw some excerpts of the defendant wearing
3 rolled up jeans. You also have in evidence a video where the
4 defendant is wearing a hoody, one of his rap videos, Slow Down
5 remix. This is going to show you a clip from Slow Down remix
6 next to a clip from this video, in addition to one of the
7 videos with the rolled up jeans. You will see what I am
8 saying in a moment.

9 We are going to play this.

10 (Video plays.)

11 There he is coming in. That's a good shot for the
12 height. His feet are spread. There is a shot of the lower
13 part of his face, from the hoody.

14 That's from -- Slow Down remix. No dispute that
15 that's the defendant. It's his rap video. You can watch it.
16 It's in evidence.

17 (Video continues to play.)

18 There they are one next to the other.

19 There is the defendant walking through again. You
20 can watch his -- you see his jeans and his boots.

21 That's the defendant from one of his rap videos with
22 jeans and boots. Here is his gait. He got shot in the leg,
23 you remember, in the leg and the groin. Here he is walking
24 through. You can watch his gait. See how that left leg,
25 right leg are. Here he is, jeans and boots. That's from his

1 Project Music, walking into a different doorway.

2 You can't see the face perfectly, obviously. But
3 put all that together, rolled up jeans, the hoody, the shape
4 of the lower portion of the face, the way he walks, his height
5 matching perfectly, the fact that he is in a hospital room
6 threatening to kill the person who dies on -- just off screen
7 here.

8 And that's not all.

9 Because here the phone evidence is important. You
10 know where he was the night of the murder because you have the
11 cell site information. Here it's not just the towers. You've
12 got the towers in addition to the poles, and so you know from
13 Special Agent Perry, whose testimony on this point you should
14 look at, if you want to big down into it, that at 12:47, less
15 than 30 minutes before this murder, his phone hits off a cell
16 tower that puts him in the Wyckoff and Gowanus area. Not in
17 Bushwick or wherever it was that the defendant tried to
18 suggest he might have been, but in this area.

19 His analysis, by the way, is at 2615 of the
20 transcript or you can just ask for Special Agent Perry 's
21 transcript.

22 And I am going to go ahead and put the phone slide
23 up and, Your Honor, if you could dim the lights briefly?

24 Check the testimony on what I just said about
25 Bushwick because I may be misremembering when he said

1 Bushwick. As I said before, what we say is not evidence. The
2 evidence is what's in evidence, the transcripts and the
3 exhibits and you can see those back with you. So if I
4 misspoke about that, I apologize.

5 But here, 12:47 in the morning, that's half an hour
6 before the murder. 271, there is a map in evidence about
7 where he is and he's in that area. It doesn't put him in a
8 lobby. It doesn't put him in a bedroom. It doesn't put him
9 somewhere else. We didn't have a drone flying around or some
10 other things doing that but he's there.

11 This is a text which is not actually at 1:09
12 because as you heard from Special Agent Perry, the text
13 messages for reasons to do with how they route those messages,
14 the time is actually in Central time, I believe it is, but
15 it's off. So that -- it doesn't even occur there. Special
16 Agent Perry walks you through that he gets that text and then
17 a voicemail and then by the time you get to 232, 12:47 here.
18 By the time you are out here -- I'm sorry. The pole 232, at
19 1:57, he's in East New York. Who lives in East New York?
20 Buck lives in East New York. He's gone to buck's place
21 before. The phone record doesn't put him at Buck's house. We
22 can't say that you know from the phone record that that's
23 where he is. But you can apply your common sense to what
24 happens, what this defendant does, when he is looking for
25 cover.

1 His phone hits off a cell tower near the Alabama
2 projects. That's where Buck lives. 595 Blake Avenue. You
3 heard Angel tell you who Buck was. You heard Vincent Winfield
4 tell you who Buck was. He's a Blood. He's a cousin he's
5 known for years. After he's arrested in 1998, in that
6 shoot-out in Wyckoff, you remember, he's on the run. Where
7 does he go for safety? He went to Buck's house. Angel told
8 you that.

9 Then he goes to Flatbush, to Caton Avenue. That's
10 the -- the tower 33. If you move down in the night to here.
11 He ends up in Flatbush. That's when he's at -- it's actually
12 the pole number is 18. It's this one.

13 If you watch what happens during the night, there is
14 an eight-hour period here, from three to ten, when he's out in
15 the Flatbush area, which is where Diane Flowers is, by the
16 way, where he sleeps. Or you could infer that that's what the
17 seven-hour blank space is, that he sleeps.

18 Now, the point of all this is just that all this
19 evidence fits together and so the guy who is on the video, who
20 is the same height and has the same pant roll and has the same
21 facial structure and has the same gait is also a guy who is in
22 a hotel room threatening to put him in a cemetery, also a guy
23 who has been on the hunt looking for this guy, just happens to
24 be half an hour before the murder in that area, just happens
25 to go dark for the period surrounding the actual murder, just

1 happens to go to an area that's consistent with Buck's house
2 and then just happens to wind up resting his head in an area
3 where he's gone before, where he got rid of the weapon after
4 the Russo murder.

5 Those things are all true for one simple reason, and
6 that's because Ronald Herron murdered Victor Zapata. That's
7 what the evidence proves beyond a reasonable doubt.

8 That's Counts 16 to 20 and racketeering act seven.

9 This is just a return to the racketeering acts that
10 are listed in the indictment but I have now been through them
11 all. This is element five that I mentioned from the initial
12 racketeering and we have walked through each of these crimes.
13 They will be listed for you in the jury charge and that's a
14 check, in addition to on all the crimes on the final element
15 here of the RICO racketeering charge.

16 Now, there is one more crime which is a felon in
17 possession count and that is -- it's unlawful to -- to hold --
18 to have a firearm, possess a firearm if you already have a
19 previous felony conviction.

20 It has been stipulated and you know that the
21 defendant has a felony conviction. That's what he went to
22 prison for those years and he's arrested in the car or he's
23 arrested after he gets out of a car in which this
24 nine-millimeter is found in the glove compartment.

25 You will be instructed on constructive possession,

1 which means that even if you are not actually holding the
2 firearm, if you exert control over it, such that you can
3 determine if it is going to be used, if one of your people is
4 carrying it for you, for example, you constructively possess
5 that firearm and that is sufficient proof of possession,
6 constructive possession.

7 You know from witness after witness that that is
8 what he does. He has a holster. He has some other people
9 carry his gun. They are in a glove compartment. They are in
10 a purse. They are somewhere else, not on him, unless he's
11 using it when he needs to use it. You know he knows how to
12 use it.

13 I am almost done. But I want to talk about
14 cooperating witnesses because they are important to this case.
15 I expect you are going to hear a lot about them during the
16 defense summation, and a few points about how to assess their
17 testimony.

18 You heard from gang members. You heard from
19 enforcers like Vincent Winfield. You heard from drug dealers,
20 Joseph Garcia, Crystal Lewis, Musa Marshall. You heard from
21 Caraballo, who is the driver. You heard from a number of
22 people, Saquan Wallace, an ally, not a member of this
23 enterprise but a guy who was on the street with him for a
24 time, gave you insight as to what happened and gave you
25 powerful, powerful evidence on the Brooks homicide, about what

1 happened after the homicide. Put him up in the stash house,
2 gave him the 38 revolver he was found with.

3 These are the people who are in the best position to
4 tell you how this works. They are the people that he chose to
5 be in his organization. They are the people who saw these
6 crimes, who carried them out with the defendant. He did not
7 choose law-abiding citizens, good people to surround himself
8 with like yourselves. He chose criminals. He chose the weak,
9 he chose people he could manipulate. He chose illiterate
10 people, Rafael Gonzalez. He chose people who would kill for
11 him. Murders like Saquan Wallace. He chose drug dealers,
12 like Joseph Garcia, Crystal Lewis, who could carry out his
13 crack dealing operation. He chose them for a reason.

14 And now maybe in some fantasy land for criminals you
15 can't make a case unless you've got the teacher and the choir
16 boy and the boy scout to build your case. If you don't have
17 clean witnesses, shucks, no case.

18 But that's not how it works, because this is planet
19 earth, in Brooklyn, New York, where we are dealing with the
20 real world. And the reason you know what happened, the reason
21 you get to see inside of this enterprise is because these
22 people who worked with him told you so. They are the ones who
23 know it.

24 So the question is whether to believe them, whether
25 to believe what they say.

1 Here, there are three questions you might ask
2 yourselves as you evaluate their testimony.

3 The first is whether they had an incentive to tell
4 the truth.

5 The second is, did what they say make sense, as they
6 were on the stand.

7 The third is, was it -- and this is the most
8 important -- was it corroborated by independent evidence.

9 I want to go through those three things in a little
10 bits of detail.

11 The first question is, the incentive question.

12 I think everybody can agree -- first of all, the
13 cooperation agreements, many of them, are in evidence. You
14 should look at them. They set out the structure of the
15 cooperation. So that's clear to you.

16 I think everybody can agree that Saquan Wallace is
17 thinking about one person and that is Saquan Wallace. Vincent
18 Winfield is thinking about one person and that's Vincent
19 Winfield.

20 Saquan Wallace didn't come in here and waive his
21 status as a juvenile and put himself into a murder out of the
22 kindness of his heart or because he turned over a new leaf or
23 because you should admire him or wants you to. Vincent
24 Winfield and Crystal Lewis and Joseph Garcia didn't come in
25 here because all of a sudden they are good samaritans.

1 No, they have an interest and that interest is in
2 reducing their sentences and that's what they hope is going to
3 happen.

4 Now, the defense is suggesting, they did in opening
5 arguments, I suspect you'll hear some more about it, because
6 they have an interest to help themselves, they lied and there
7 is a simplicity, a clarity to that argument, but it falls
8 apart if you examine how the incentives actually work.

9 The fact that these people are self-interested is
10 the beginning, the beginning, of your analysis. That part is
11 true. Nobody is disputing it. Nobody is asking you to like a
12 single one of the people who took the witness stand.

13 The question is, can you believe them?

14 Which way does the incentive cut? You heard about
15 the cooperation agreements. If they lie, and it is found out
16 that they lie, the government can rip up the agreement and
17 they may not withdraw their guilty plea. For many of these
18 cooperators, almost all of them, that means they are stuck
19 with serious -- life in prison potentially. Many of them put
20 themselves into murders. Many of them put themselves into
21 murders that they hadn't been charged with before.

22 Crystal Lewis pled to her involvement in the murder
23 of Macho, to texting, for texting Herron about where those
24 guys were. She didn't do it because she thought she wanted to
25 have a longer sentence, obviously.

1 But it is significant that the risk, what they face
2 if the agreement goes away.

3 This is not a question about telling a story about
4 why you were late for curfew or what you did with the last
5 cookies in the cookie jar. This is complex. There are lots
6 of moving parts. You have been here four weeks. So ask
7 yourselves, is the incentive to come in and tell some yarn
8 that is then going to be blown out of the water by phone
9 records or by what somebody else says or by where the cell
10 towers say they were or about where they were when they got in
11 an accident or about what some other witness saw or about how
12 the crime scene photos and ballistics and everything else
13 works out? And say oops, that didn't work. Now I am going to
14 go spend the rest of my life in prison or is the incentive
15 that I have information and I want to help myself and I am
16 going to tell it.

17 That's for you to figure out. That's going to be
18 the importance of corroboration. But the first point on
19 incentives is that it's way too pat and easy to say they are
20 self-interested, so they lied. It's not that simple.

21 The second thing is really just the evaluation of
22 the witness on the stand. How did they seem to you? Was it
23 coherent? Were they witnesses who could answer questions from
24 both parties? Did their answers hang together or did they
25 find themselves in some spot where they couldn't respond? Did

1 they strike you as credible?

2 I would say, I submit, and it's for you to
3 determine, to a witness, with some wrinkles here and there,
4 some nerves here and there, these people gave you lots of
5 detail. They were correcting lawyers from both parties for
6 the government and the defense about amounts, about streets,
7 about where it happened.

8 (Continued on next page.)

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1 (CONTINUING)

2 MR. NITZE: Vincent Winfield, to take an example.
3 His knowledge of the Bloods of how the operation worked, of
4 where they were, of how the structure operated, of what those
5 videos are, of where, I mean, if you want read his testimony,
6 it's lengthy. Did it have the ring of truth? That's what
7 that's about.

8 And finally, and definitely most important is this
9 question of corroboration. I'm not going to go through all
10 the ways in which these witness's testimony were corroborated,
11 I've done a fair amount of it already, but the point of that
12 is when a corroborating witness's testimony matches up with a
13 civilian witness's testimony and matches up with other
14 physical evidence that they couldn't know about, that is
15 important information in evaluating their credibility.

16 You have to ask yourself if it is remotely plausible
17 that everyone -- that the world's most massive conspiracy is
18 underway and somehow everybody got together, everybody fit
19 their stories together and they pulled in Amber Hudson from
20 wherever she is and Linda Pac and other people who don't have
21 agreements, and the photographs, and everybody stitched it
22 together, people who don't even like each other, people who
23 don't know each other, and they made it all fit with the
24 physical evidence and that's absurd, I submit.

25 This isn't one witness telling a story and saying

1 believe me. It's not three witnesses telling a story with a
2 couple documents and saying believe me. It fits with the
3 documents. This is four weeks of interlocking crimes and
4 personnel and it all fits. There are lapses of memory here or
5 there. There are points you're going to wrestle with about
6 did this information match up or not and you'll be instructed
7 about how to evaluate inconsistencies and it's for you to
8 decide what to make of them.

9 But some inconsistencies, some texture to what to
10 remember from years ago, that is the texture that comes with
11 truth-telling, those are the hallmarks of truth. Somebody
12 asks you about something that happened years ago, fill a room
13 with people and ask they're not all going to be exactly the
14 same, but some things you remember. Seeing somebody get shot
15 in the face might be an example.

16 I'm going conclude with some brief remarks on the
17 Defense case and I want to say as I do this that first of all,
18 Mr. Neuman and Mr. Soloway are skilled lawyers and they're
19 zealous advocates for their client and that is the way it
20 should be. And remember, as you've been told and as you'll be
21 told again, the burden is entirely with the Government to
22 prove the case beyond a reasonable doubt. Defense has no
23 burden, don't have to say a word, don't have to put on a
24 witness, don't have to object, don't have to do anything
25 because the burden of proof rests with the Government and

1 that's also the way it should be. And the Government embraces
2 that burden, but when the defendant puts on a case, when the
3 defendant presents you with a theory about what happened, you
4 must test it. That's your job, it's your oath, it's your
5 sworn duty to see if it makes any sense. Test it against the
6 facts and the evidence.

7 The Defense theory that has been advanced thus far,
8 I submit, does not make any sense. It doesn't fit the
9 evidence. What you've been told is that Ronald Herron went to
10 prison and became a different person. You were told in
11 opening arguments that he read a lot, he wanted to make a
12 contribution. The defendant himself told you that he
13 underwent a radical transformation and you know that is not
14 true and the reason you know it is because you know what he
15 did when he was in prison; smuggling gang literature,
16 violence. You've got a stipulation with a litany of things
17 that he did in prison. He spent his last ten months in prison
18 in the SHU after he tied up his bunkie. Perhaps you're to
19 think that the transformation took place in that last ten
20 months he was alone in the SHU.

21 You have the letter Lieutenant Zimpfer testified
22 about. As for this little lightweight shit, I beat that body
23 on every count. Hen they knock me, I was in the spa, with a
24 ratchet and a hundred G's of that hard way, so I have to take
25 this little light ass two to six, I see them people next

1 month -- parole people -- they going to smash me because I
2 fuck up boot camp. They got me square 'til summer but it's
3 monkey shit to a gorilla like me.

4 Were those the first steps towards transformation,
5 towards doing something positive? No. He got in with the
6 Bloods, he planned for what he was going to do when he got
7 out, and then he did it. He scoffed at the time he was doing,
8 he bragged about beating a body.

9 The Defense would have you believe he left his
10 criminal ways behind to become an artist, a gangsta rap artist
11 and the Government does not dispute that the defendant cared
12 deeply about his music, about rap. The Government put in some
13 of those rap videos. There's nothing at all inconsistent
14 about being an aspiring gangsta rap artist and a real life
15 hardcore criminal.

16 In fact, as you know from the Defense expert, it's a
17 pretty good combination because in gangsta rap, what is valued
18 is association with criminality and authenticity and being a
19 hard. So, if you really are hard and you really are a
20 criminal, you really did the stuff you say you did and you
21 have some talent and you can rhyme, well you're on your way.
22 That's what all those project music videos are about. He's
23 trying to capitalize on what he's done. That's why he's
24 talking about the things that you have all this other evidence
25 about. He doesn't care about some industry rapper. I'm the

1 real thing. I'm different. I'm cut from a different cloth.

2 (Video plays.) (Video stops.)

3 MR. NITZE: Now, maybe he's making a transformation
4 slowly at some point, maybe he wants to do music, but that's
5 not what he's doing from 2008 to 2010, he's got real stuff
6 going on. He's killing people is what he's doing, selling
7 crack cocaine and drugs and running his enterprise.

8 You heard Uncle Murda testify, Leonard Grant. The
9 defendant had been with Uncle Murda and they've gone in the
10 studio and spend some time together. To who? Uncle Murda
11 doesn't live in the Gowanus, go look at the testimony when
12 he's asked about Wyckoff. He doesn't know what it is. He's
13 not with him. We're not arguing that they didn't make music
14 together, but it's just not the point of the case.

15 Jonathan Rice came in here and testified, this is
16 the gentleman with the black glasses who's in prison and his
17 testimony was important and revealing because if we're talking
18 about the Defense theory that this is a transformed man trying
19 to do something positive, well, Jonathan Rice's experience is
20 a window into what kind of influence we have here.

21 Jonathan Rice got \$550,000 or whatever it was in a
22 settlement and that's what he's got, and he's going to get out
23 of prison at some point and try to make a life for himself.
24 And what does he have left? Sixty grand. And why? Because
25 he invested in the rap career, so he thought. He bought a BMW

1 with his money, he went and showed him some CDs. That's not
2 the only person. Desiree Taylor. He goes in there, kicks her
3 out of that room, takes her auntie's room, paints it, tells
4 her mind your own business, throws her auntie's stuff in the
5 garbage and sets up his drug spot there. Chyna, he's up in
6 that apartment with a mask and a gun while she's carrying her
7 baby. This guy's not a positive influence. He runs a
8 criminal enterprise and he manipulates people to do what he
9 wants to promote his own interests.

10 Probably anyone watching this trial could agree that
11 many of the people who sat on that witness chair and indeed,
12 maybe even Ronald Herron, could have used more support at some
13 point in their lives. That might be a topic of conversation.
14 That's an important issue, but that's not what this case is
15 about and to the extent you're concerned about influences,
16 what effect people are having on the people around them in the
17 community that is already struggling, trying to make it, what
18 you have here is a racketeer and somebody who kills and
19 murders and beats people, poisons a community with drugs.
20 That's not a positive influence.

21 You know, Dr. Peterson, the rap expert, grew up in
22 Newark in the projects, he said, and he got a scholarship and
23 he went to school and he clawed his way out. Now he's got a
24 Ph.D. Nobody's saying that's an easy thing to do. But it's
25 sure a whole lot harder with the kind of influence that you're

1 looking at here, so consider whether it makes any sense to you
2 at all that this defendant came back a reformed man looking to
3 have a positive influence, which brings me to the notion that
4 the Bloods street gang is also an organizations designed for a
5 positive influence.

6 Jonathan Rice, on direct examination, talked about
7 business classes and history, fellowship. And then on
8 cross-examination acknowledged that there's also violence and
9 murder and threatening with witnesses and dealing drugs and
10 retaliating against law enforcement. The Bloods are no
11 community organization. They don't have code words for
12 criminal conduct because they're trying to help out. No.
13 Read the defendant's testimony in its entirety.

14 I want to emphasize again because it's important.
15 There is no burden, none, for the defendant to say anything,
16 put on any evidence in this case. That burden is ours, the
17 Government's. But what you had was no, I didn't do that. No,
18 I didn't do that. No, I didn't do that. And who are these
19 people? Who's Joseph Garcia? Who's M-Dot? Who is Crystal
20 Lewis? Who's Vincent Winfield? Who's Rafael Gonzalez? These
21 are just people in the neighborhood, I'm kind of catching up
22 with them when I get back. Really? That's who you're calling
23 1,200 times? Take a look at the phone chart. It doesn't make
24 any sense. It doesn't match up at all. That theory is
25 absolutely obliterated by the evidence that was put in front

1 of you in this case.

2 He tells you he came back to lead a movement, to do
3 something positive. Well, he came back to take advantage of
4 people, to promote himself and to commit crime. It's been
5 more than a decade since the Brooks murder, since he got away
6 with murder, since he beat the system, and in that time he's
7 murdered two more people, taken their lives, he executed them.
8 He's poisoned a community with crack cocaine and heroin. He's
9 robbed people, he's beaten people. It's time to hold him
10 accountable for creating and leading this criminal
11 organization, for the guns and the drugs and the violence, for
12 the murder of Frederick Brooks, for the murder of Richard
13 Russo, for the murder of Victor Zapata.

14 We ask you to find him guilty on all counts because
15 the evidence in this case, the overwhelming evidence in this
16 case proves him guilty beyond a reasonable doubt. Find him
17 guilty.

18 Thank you.

19 THE COURT: All right, at this time we will take a
20 five-minute break.

21 All rise for the jury.

22 (Jury exits.)

23 (In open court; outside the presence of the jury.)

24 THE COURT: Please, be seated.

25 We're going to have another charge conference

1 tomorrow morning at 10:30, all right? We'll take five
2 minutes.

3 (Recess taken.)

4 (In open court.)

5 (Judge NICHOLAS G. GARAUFIS enters the courtroom.)

6 THE COURT: Okay. How long do you think your
7 closing will be, Mr. Soloway?

8 MR. SOLOWAY: I think it's going to be over an hour,
9 Your Honor, somewhere between an hour and an hour-and-a-half.

10 THE COURT: That's fine.

11 The jury is ready to go right through, so we're
12 going to go right through.

13 I've also ordered some cookies for the jury. I'll
14 take a very quick break before the rebuttal and that way, if
15 anyone needs a sugar lift, they're going to get it. But I'm
16 sure it will be fine, they won't need it. You'll keep them
17 fully engaged.

18 MR. SOLOWAY: We shall see.

19 We're ready, Your Honor.

20 THE COURT: Okay. Let's call in the jury.

21 Are you going to need the ELM0?

22 MR. SOLOWAY: Yes.

23 THE COURT: All right.

24 (Jury enters.)

25 THE COURT: Please be seated, everyone.

1 All right. Mr. Soloway, you may close.

2 The closing argument from the defendant.

3 MR. SOLOWAY: Thank you, Your Honor.

4 SUMMATION

5 BY MR. SOLOWAY:

6 MR. SOLOWAY: Good afternoon.

7 THE JURY: Good afternoon.

8 MR. SOLOWAY: It's late. You just listened to the
9 Government's initial closing argument and the way the rules
10 work is that the Government closes first and last and Defense
11 closes in the middle and even though it's a long day and I'm
12 going to be speaking for a while, I'm going to tell you that
13 it's because I have a lot to say about what has been a long
14 case.

15 And of course, it's my hope that everybody will bear
16 with me because what's important here is really one thing and
17 that's for you, you people here, to make up your own mind
18 about what to do in this case, for you people to decide. You
19 know, what we do here, we call it argument, you know, and I am
20 not going to talk about every piece of evidence, every
21 witness, everything you've heard over the course of whatever
22 this three-and-a-half-odd week trial has displayed here. And
23 the things that I don't talk about, many times I'll say to you
24 it doesn't mean that we agree about those things or that we
25 concede those things. It's just really not possible or

1 practical to go through everything.

2 And since one of the things that I have an
3 opportunity to do here is to respond, because I've heard what
4 the Government has to say on their opening summation, I'm
5 going to just try to do that in the beginning, to respond to a
6 couple of things that Mr. Nitze said and then, sort of deliver
7 the summation that I kind of planned to deliver. But we're
8 here because the Government says that Ronald Herron is a
9 vicious monster and that's why we're all assembled here.

10 They brought charges against him that he's a
11 mass-murderer, that he is a man that kills over the smallest
12 slight, kills to maintain power and control over territories
13 where his people sell drugs for him and when those people get
14 out of line, he robs them, hurts them, kills them, sends them
15 or sends people to hurt them, lieutenants in his army, Bloods,
16 do things for him. And I tell that you not much of what I'm
17 going to say here is probably going to come as a very big
18 surprise to you, because you've heard the things that
19 Mr. Neuman and I have been doing over the course of these
20 three-and-a-half weeks.

21

22 (Continued on following page.)

23

24

25

1 MR. SOLOWAY: But I want to really talk, again, like
2 I said, about some of the things quickly that the government
3 talked about while they were speaking and one of the things
4 that Mr. Nitze sort of ended with was when he played the tape,
5 the surveillance tape, at Wyckoff and he had all of these
6 observations about how that person, who clearly is a large
7 African American or black man who killed Victor Zapata is
8 Ronald Herron.

9 And he described those different ways that tell you
10 that that's the right man. We've got the right guy. And some
11 of the things that he said just weren't fair and just weren't
12 right. I just want to start out, pointing that out.

13 Because one of the main features or one of the main
14 points he made was that Angel Figueroa, you remember him, is a
15 guy who said, when he saw the video, that's him. Oh, I know
16 him. I slept in the same place with him. I forgot the exact
17 words.

18 And Mr. Nitze said he was with him this period of
19 time from '98 to 2000. And when you're with somebody from '98
20 to 2000 and you're with him all the time and you know them
21 like your friend or your best friend, who is in a better
22 position to say when you see an image of somebody walking,
23 that's the guy.

24 But the reality of the situation is that that's not
25 really what happened and it's just not really true and the

1 reason it's not true is that -- judge, can I have the Elmo up?
2 -- is that this is a custody time line here on your screens.
3 It's a demonstrative. It's not in evidence. It comes from
4 the testimony and it's up to you to decide what the facts are.

5 But the reality is -- and if we could just move it
6 up a little bit here -- is that from March of '99, you'll
7 recall, my client was arrested, based on information that was
8 given by this very same Angel Figueroa in that Wyckoff
9 shooting that ultimately got dismissed. So from March of '99
10 to May of 2000 my client was at Rikers Island. He was
11 released on the case in May of 2000. So when you say he was
12 with Angel Figueroa from '98 until 2000, that's just not true,
13 because in March of '99 my client was arrested and stays in
14 jail until May of 2000.

15 And the picture that you saw that was displayed to
16 you of that slow down, remix song, slow down. The pictures
17 that we saw when slow down was played, the actual music video
18 that was create by Ronald Herron and Uncle Murda it was not
19 blurry like that. It was turned by the government into some
20 kind of blurry image of a black man, when the video itself is
21 not blurry. It's clear. I'm not sure how that happened.
22 Watch the video. It's Ronald Herron and Uncle Murda singing
23 music.

24 How it turns into that blurry image I'm not really
25 sure. I don't know how that happened. Nobody disputes that a

1 large black man comes out of that stairwell, walks into that
2 vestibule, walks out of -- runs out of 185 Nevins and kills
3 Victor Zapata. And I'm going to talk more about, obviously,
4 that later and what the evidence that my client did that is,
5 and what the evidence that my client didn't do that is.

6 Also at that point in the case, when Mr. Nitze was
7 closing, he talks about how the cell site information puts my
8 client there and you know the cell item information you have
9 to go back, you have to remember, you have to look at it, was
10 that there was a cell tower at 88 Wyckoff, according to
11 Mr. Perry, who was the cell site witness the government
12 called, 8 Wyckoff is on the corner of Smith and Wyckoff
13 Streets. And that's for the neighborhood of Gowanus and also
14 there's a cell site tower that's at -- that's somewhere south
15 of 185 Nevins that was closer to 185 Nevins where the murder
16 was committed that my client's phone was not pinging off of or
17 not being routed through at the time when the last call was
18 made was something like 12:47 a.m., something like that.

19 So, look, the government's whole chase that we don't
20 dispute is that my client is in and around the Gowanus area
21 all the time. Perks, a place where you heard he spends a lot
22 of time, frequents often, is somewhere on the corner of
23 Wyckoff and Smith Street. He's in the neighborhood. You know
24 I want to talk also about that video that Mr. Nitze played of
25 Project Music One Part Two, where Joe-Joe Garcia and Ronald

1 Herron and this guy named Goldie and then this person that he
2 referred to as a Crackhead come out of 423 Baltic and you play
3 that video for yourselves.

4 Mr. Nitze characterized it in certain ways. She was
5 talking about my client, about his work, his drugs. You know
6 what really happens there, this real lady that comes out in
7 the middle of this video they are making, you listen to it.
8 She says to him, You don't have your business on you any more,
9 talking to Ronald Herron, looking right at him. Because in
10 2007 or 2008, when that video was played, this is a lady who
11 could have known Ronald Herron from the days back when he's
12 told you he was selling drugs in and around the Gowanus
13 projects. She says to him, you trying to make a sober person
14 out of me, just like Mr. Nitze says, that's right. I heard
15 that too. By what? By not selling me drugs? You don't have
16 your business on you any more. Joseph, Ronald says, take care
17 of this lady or something like that. Like this is your
18 customer. Get her out of my video.

19 You know, she knows Ronald Herron, she walks out of
20 423 Baltic, potentially as somebody she used to buy drugs
21 from. But it's up to you. All I say to you is you decide.
22 Like don't just accept these interpretations. Don't accept my
23 interpretations, just do your job. That's all I can ask.

24 You know, Caton Avenue, oh, after the Feo shooting
25 -- after the Feo, Rafael Gonzalez, Richard Russo murder my

1 client is at repole -- no. No. No. There's times where my
2 client is at what they refer to in the cell site evidence as
3 repole 18 which is in the area of Caton Avenue in Brooklyn.
4 You know, my client testified that his girlfriend lives on
5 Caton Avenue also, 830 Caton Avenue, a few blocks away from
6 the location where Diana Flowers' apartment is. He lived with
7 Tanya Ambrose, his girlfriend, from shortly after the time he
8 got out of jail in July of 2007 until he was arrested on
9 October 5 of 2010.

10 You look, you look, at the cell site records. The
11 totality of them. They have about 30 days, 35 days of cell
12 site records and see how many times he's there. The
13 conclusion to be drawn from that is not the conclusion the
14 government wants you to draw that he's at Diana Flowers'
15 house, some kind of coconspirator of his. He's in that
16 neighborhood a lot. Take a look.

17 You know, there's one photograph -- Mr. Nitze
18 mentioned, he put up a photograph, talking about Frederick
19 Brooks. He put up a photograph in connection with the
20 Frederick Brooks murder that was taken by the crime scene
21 officer or detective that he identified was a photograph taken
22 from the curb line on Bond Street looking towards the front
23 door of 198 Bond and look back at the evidence of the crime
24 scene unit officer's testimony because what he said, what that
25 photograph was not taken from the curb line. That photograph

1 was taken from somewhere further toward the front door of 198
2 Bond, that is between the curb line and the front door of 198
3 Bond, not from the curb line. That's specifically what he
4 said.

5 However, Detective Billups did testify that after he
6 spoke to Darnell Saunders, that after he spoke to Darnell
7 Saunders and Amber Hudson, that he went back to 198 Bond or to
8 the area and he did, in fact, take a photograph from the curb
9 line. That's the evidence. He took a Polaroid. I guess
10 that's the only camera he had with him. And that's the only
11 photograph that's actually taken, that's in evidence in this
12 case, from the curb line of Bond Street in front of 198 Bond
13 in the direction of the front door. And that's this.

14 And then you remember Detective Billups described
15 how he wrote on the bottom, labeling the photograph as to what
16 it was. And that was put in as a defense exhibit. This is a
17 Polaroid photo that Detective Billups took from the curb line
18 in the direction of 198 Bond. Okay, it's 66 feet. Okay.
19 Detective Martello stood outside, 66 feet. Did that recreate
20 the conditions under which Amber Hudson was watching that
21 whole situation unfold? I would say I doubt it. Again,
22 that's something I'll talk a little bit about later.

23 Now, so Ronald Herron is charged with a lot of
24 crimes here and one of the things that Mr. Neuman said to you
25 when he opened was, Gee, we're really worried that you're just

1 going to throw up your hands here and say, well, there's a lot
2 of crimes charged here, he must be guilty of something or a
3 lot of things or he must be guilty of everything.

4 And we try cases here, sometimes we try cases and
5 there's one count in the indictment and it's the job of the
6 jury to say, Does the evidence that the government has
7 presented as to this one count in the indictment satisfy me,
8 prove all of the elements beyond a reasonable doubt of this
9 crime?

10 And here you have an indictment with 20, 21 counts.
11 And it's your job to take each and every one of those counts
12 individually and say what's the evidence in this case that
13 goes with this count? Obviously, it's much more of a job than
14 taking a one count indictment and trying to figure that out.

15 But that's really what your job is here. We ask you
16 to do that job. We ask you to take each and every one of
17 these counts charged in the indictment, charged against my
18 client, and do exactly that, figure out what is the evidence
19 and when you figure that out, whether it convinces you beyond
20 a reasonable doubt that my client is guilty on that count.
21 Again, that's your job. That's what we ask you to do. And we
22 ask you to do it yourself. Make these decisions yourself.

23 Now, I'm going to start, I just want to talk, start
24 where the government started. Because the first day of the
25 trial you heard from Darnell Saunders. Mr. Nitze talked about

1 him a little bit. And I want to talk to you about Darnell
2 Saunders a little bit and sort of start with that part. And,
3 again, it's the beginning, first day, first substantive
4 witness you heard.

5 Now, the government says in 1996 -- 1998, rather --
6 you know, when Darnell Saunders' testimony starts that my
7 client, he's a boss. You know, the government really sort of
8 wants to keep things kind of simple here with Darnell
9 Saunders. They put him on the stand. And his testimony was
10 that he's selling drugs out there in the Gowanus projects.
11 Ronald Herron is out there.

12 And there's this racketeering enterprise that begins
13 in that year in 1998 when Darnell Saunders he's testifying he
14 comes home from college and starts selling drugs out there.
15 And there's facts and evidence that you should really pay
16 attention to when you're considering what Darnell Saunders has
17 to say and what all the witnesses have to say. And try to
18 figure out whether what the witnesses say really accords with
19 the government's narrative here, the government theory here.
20 With Saunders, for example, like here's how it goes in the
21 real world here in this courtroom.

22 Darnell Saunders testifies, they bring this out,
23 that he comes home, 1998, sells drugs at 198 Bond and where is
24 Ra, the guy he calls Ra, who is Ronald Herron? The testimony
25 is, oh, he's selling at 423 Baltic, Ra's building. And that's

1 the testimony. If you could put up 72, please, page 72. This
2 is a page of the transcript of the trial that I want to just
3 direct your attention to on this topic.

4 Okay. This is Darnell Saunders on direct: Turning
5 your attention again to this period of time after you returned
6 to the Gowanus houses after college, were you selling drugs at
7 the time?

8 Yes.

9 Where were you selling?

10 198 Bond.

11 Okay, great. Beautiful.

12 And then the testimony continues on page 72. Right.
13 He asks, sort of at the bottom of the page, page 72. He says:
14 There, the next page -- these transcripts are obviously all
15 available to you if you want them. Are you familiar with the
16 building mark 423 here? Mr. Saunders says, that's where Ra be
17 at. My girlfriend family lived on the first floor over there.
18 My godmother live in that building.

19 "QUESTION: And at the time that you were selling
20 crack cocaine at 198 Bond who, if anyone, was selling drugs in
21 423 Baltic if you know?

22 "ANSWER: Ra."

23 And that's the government's story here, that people
24 are selling wherever they are selling, but 423, that's where
25 Ra's selling. When you say Ra, you mean Ronald Herron?

1 Darnell Saunders: I was selling at 198. He was
2 selling at 423. The building where him and all of these other
3 people were controlling everything.

4 That's the government narrative. That's what's
5 happening according to the government. Great.

6 But then there's cross-examination and reality
7 intrudes. Okay. Because what happens on cross -- I'm just
8 going to try to remind you of this because it's a long time
9 ago. What happens is that the picture painted comes a little
10 bit unhinged. Okay. Because a document is shown to
11 Mr. Saunders on cross that reminds him that he gets arrested
12 and convicted in 1998 for selling crack cocaine to an
13 undercover police officer in an elevator at 423 Baltic, of all
14 places.

15 And that's page 760 of the transcript, again, of
16 Mr. Saunders' testimony now on cross. Where he says or I say:
17 Having had a chance to read that document, I just want to ask
18 you some questions. Is it correct, that you were arrested in
19 '98 for a case involving a sale of crack that you made to an
20 undercover police officer at 423 Baltic in Gowanus?

21 "ANSWER: Yes.

22 Okay and in that case the sale that you made was
23 inside the elevator in 423, right?

24 "ANSWER: Yes."

25 So, where's the tidy, torrent racketeering

1 enterprise that's controlling 423 and the crack sales there in
2 Gowanus if Darnell Saunders is getting caught in the elevator
3 at 423 in 1998 selling crack cocaine to an undercover police
4 officer?

5 Now, undaunted, the government stands up on
6 redirect, after these facts are elicited, and there's sort of
7 a little bit of a shift. And you should notice, it's your job
8 to notice and to figure out what the evidence tells you.

9 You know, the evidence and the facts should shape
10 the reality. The narrative doesn't shape the facts. It's the
11 opposite. So after the cross there's redirect by the
12 government and what happens on redirect is that Mr. Saunders
13 is now asked -- this is at page 784 -- he's asked: Okay.
14 Let's talk about 2001 now.

15 Can you show the top of the page for one second so
16 the jury can see that this is redirect?

17 In 2001, at the time of the homicide that we've been
18 discussing, you were still selling drugs over in 423 Baltic,
19 right? Now it's been shown in '98, he was selling drugs in
20 423 Baltic.

21 On redirect: Were you still selling drugs over in
22 423 Baltic?

23 "ANSWER: No."

24 "QUESTION: Where were you selling drugs by then?

25 "ANSWER: 198."

1 Why weren't you selling at 423?

2 That was somebody else's building.

3 Just like he said in '98. That was somebody else's
4 building, who is Ra. The same question.

5 That was somebody else's building? Whose building
6 was it?

7 That was Ra's building.

8 So now we're talking about 2001. Ra's building,
9 racketeering, 423, Ra's building, racketeering, 423. That's
10 the mantra that we have here. Now, okay, 2001. It's Ra's
11 building.

12 But really, really, really the evidence that you
13 should look at is that the fact is that in 2001 this is what
14 is going on. Ronald Herron's mother has lost her apartment
15 sometime in 1999 due to the New York City Housing Authority
16 eviction proceedings that you heard evidence about. She's
17 evicted. Ronald Herron is homeless and in October of 2000
18 Ronald Herron is shot by Terrence Smalls outside of 423.

19 And he testifies that he's actually during this
20 time, after October of 2000, afraid to go inside of Gowanus
21 because he no longer feels comfortable inside the confines of
22 Gowanus and tries to stay on the perimeter of Gowanus at that
23 time. He doesn't have an apartment. His two cousins, Naquan
24 King and Thomas Rodwell that lived in 423 are actually on the
25 run because two days after Terrence Smalls shot Ronald Herron,

1 they shot and killed Terrence Smalls.

2 Ronald is trying to sell drugs on the outskirts of
3 Gowanus. He's not very mobile. And that's where 198 Bond is,
4 on the perimeter of the project you'll recall from all the
5 evidence. And so that really, really is also not terribly
6 consistent with the government's narrative here, but it is
7 consistent with the evidence. And the picture that emerges
8 from the evidence is also something about Rafael Gonzalez, who
9 they also talk about because he also gave testimony in
10 connection with this period of time, including drug sales in
11 and around Gowanus, Ronald Herron and the murder of Frederick
12 Brooks.

13 But really more kind of messy facts emerge
14 underlying Rafael Gonzalez' testimony because you will recall
15 that Rafael Gonzalez said, oh, I was working for Ra. He
16 posted me to sell at 198 Bond. This is where I was supposed
17 to sell for him. And it came out, however, that some other
18 facts emerged because Mr. Gonzalez, you learned, was arrested
19 in July of 2001 for making five crack sales to undercover
20 police officers, between April and July of 2001.

21 And, again, this neat, racketeering picture that the
22 government is trying to deliver is somewhat messed up by what
23 really happened with Rafael Gonzalez. Because he also is
24 questioned on cross and shown documents. And now, now,
25 skipping ahead a little bit, we have a stipulation about where

1 those five crack sales took place. And this is a stipulation
2 that was put into evidence today, Defense Exhibit Y, that is
3 about the locations of those crack sales.

4 And you can see where they are. April 25, 2001, the
5 front of 186 Bergen Street. May 15, 2001, the lobby of 198
6 Bond. Okay. Made a sale in 198 Bond. Made another one
7 later, May 29, 2001, the front of 426 Baltic. July 1, behind
8 186 Bond Street. And July 17, 2001, inside 198 Bond.

9 Now, Bergen Street, you know, you have evidence,
10 including Government's Exhibit 2, which is that aerial map
11 that we were looking at earlier. You'll see that Bergen
12 Street is not even in Gowanus because Gowanus is bordered on
13 the north by Wyckoff Street and the next street north above
14 that is Bergen. He's not even in Gowanus when he makes this
15 sale in April of 2001.

16 So the reason I'm pointing all of this out to you is
17 because I'm just really begging you to pay attention to the
18 real facts and to go back into the jury room when it's time
19 for you to do that, which will be very shortly, and to figure
20 this stuff out yourself based on the evidence and not to
21 accept anybody's tidy little picture of how things were really
22 working when he was the boss and everything and everybody did
23 what he said, the way the government suggests to you it
24 happened. That's all.

25 (Continued on next page.)

1 MR. SOLOWAY: (Continuing)

2 Now, the Brooks June 2001 murder case, you know, you
3 have evidence that comes from Amber Hudson and Darnell
4 Saunders and Linda Pack and they blame, they all blame Ronald
5 Herron, and the evidence really is that at the time Darnell
6 Saunders goes to the police, which is the day after Frederick
7 Brooks is murdered in the lobby of 198 Bond. He is on
8 probation for selling drugs. Amber is his girlfriend, who is
9 five months pregnant at the time. That's in the evidence.
10 He's selling drugs at 198 Bond Street.

11 And he goes to this trial at the time when Ronald
12 Herron is on trial and appears before the presiding judge in
13 that case and he tells her in connection with his presence
14 there in the courtroom, to Judge Chambers, that he went to the
15 precinct when he first blamed Ronald. This is 782. This is
16 his testimony from the transcript.

17 He says, among other things, that, at the bottom,
18 when you said --these are questions that I was asking him with
19 what he said to judge chambers.

20 He said, starting at line 13, right.

21 Because you were hearing or were worried that people
22 were going to think that you did it, right?

23 Answer: No. Because I was in the building and I
24 know people seen me in the building, people that lived on the
25 first floor.

1 Referring to what it is that motivated him to go to
2 the precinct the day after this murder.

3 Question: Okay. So when you said to Judge Chambers
4 in the material witness hearing, I went to the precinct to
5 clear my name, that's because you were worried that you were
6 going to get in trouble for the murder of Frederick Brooks,
7 right?

8 Answer: Yes.

9 And that was about Mr. Saunders's s earlier
10 testimony about saying that he went to the precinct, among
11 other reasons, to clear his name.

12 Now, this particular crime is a crime in which you
13 have only the testimony of witnesses to help you. You have
14 this drug dealer, Darnell Saunders, and he is a big drug
15 dealer. He was caught in 2013 with 15 ounces of large rocks
16 of crack cocaine, resulting in charges of an A felony, the
17 most serious drug felony in New York. This is not some little
18 guy here, who lives in a world, going back into the nineties,
19 of constant violence, crime, deception. He told you in his
20 direct testimony, you should read it, what kind of world it
21 was he was living in.

22 And he doesn't act out of charity for Frederick
23 Brooks. He is a guy who has his eye on money. He has his eye
24 on getting rid, like drug dealers often do, of the competition
25 so more drug profits can go to him and less drug profits can

1 go to other people.

2 If you want to talk, like Mr. Nitze mentioned on his
3 summation, about the fantastic world that the defense is going
4 to live in, that you are going to hear about from me, you
5 know, the fantasy about why Darnell Saunders is here now, he's
6 older, he has children, he's a changed man, he's not the guy
7 he was, he would want justice for his family if something like
8 this happened, is really the fantasy. That part is the real
9 fantasy that we are talking about.

10 Because all of that is fantasy when you are talking
11 about Darnell Saunders. Because Darnell Saunders, from 1998,
12 consistently his entire life, has committed drug crimes in
13 this world of drug dealing and has gone back and forth to jail
14 and has become a bigger and bigger drug dealer as time has
15 gone on.

16 When he goes to precinct, it is just really up to
17 you to try to figure out what exact ulterior motivate he might
18 have. Because he might want to get Ronald Herron off the
19 street, who is part of the competition. He could have all
20 kinds of motives to get Frederick Brooks off the street,
21 including killing him himself, or one of his associates doing
22 that. Again, because that's where he sells drugs.

23 And the point of all that is that you have to decide
24 whether or not the proof in the case proves Ronald Herron is
25 guilty beyond a reasonable doubt. The proof in the case is

1 Darnell Saunders and his family. Because there is no other
2 evidence. There is evidence of people who are unreliable
3 people. There is no physical evidence. There is no -- there
4 is no physical evidence. There is no scientific evidence.
5 There is no DNA. There are no fingerprints. There are just
6 the words of these people.

7 And it is true, the government tells you that -- and
8 it is true, that Amber Hudson, for example, is not a criminal.
9 She is not. She has no criminal record that we are aware of.
10 And she is Darnell Saunders's girlfriend, who is pregnant with
11 his child at the time when all of this happens, and he tells
12 her what to do. It's possible that she would just go and do
13 it, to help Darnell Saunders with whatever the agenda it is
14 that Darnell Saunders has at that time.

15 But the bottom line is, that these pieces of
16 evidence are for you not to just accept, you know, because the
17 government says he is now coming in here and telling the truth
18 for all these reasons that might -- that could be true. But
19 you should figure it out and you should think about it and you
20 should talk about it.

21 Now, it is also really important to try and
22 understand that when Darnell Saunders and Amber Hudson go to
23 the precinct in June of 2001, you know, they don't really
24 necessarily understand all of the ramifications of going to
25 the precinct and making this complaint. They don't really

1 understand how that criminal justice system at that point is
2 necessarily going to move forward. They don't know really
3 whether or not it is ever even going to be revealed that they
4 did that. There is no way, real way that you could say to
5 yourself that they understand all the things that are going to
6 flow from this complaint they made at the precinct the next
7 day.

8 And it sounded like, when Mr. Nitze was talking, he
9 referred to this phone call that Darnell Saunders got from Ra
10 when Ra was locked up, when Mr. Herron was locked up at Rikers
11 Island and he became aware at that point from this phone call
12 that Mr. Herron knew that he was the one that told on him and
13 that's why Ronald Herron was arrested. Darnell Saunders, he's
14 kind of like surprised by that. You know, you go to the
15 police. He might just think that you go to the police and
16 Ronald Herron magically disappears off the street. You know,
17 one less person to deal with.

18 But, of course, there is much more to it than that,
19 and he doesn't really understand all of that at the time.

20 So when you consider the evidence in the Frederick
21 Brooks homicide case, those are some of the things that I ask
22 you to think about, and, again, it is up to you to figure out
23 what all these pieces of evidence mean and what the lack of
24 evidence that Ronald Herron did this crime means.

25 Now, I want to talk to you about a few things that

1 are generally important in this case, you know, pieces of
2 evidence that are not specific to any particular crime. You
3 know, Ronald Herron, you heard is arrested in 2010. The
4 government talks some about money, Jonathan Rice, these kinds
5 of things.

6 He's arrested in October 2010. According to the
7 government, at that time he is the leader of an enterprise, a
8 narcotics enterprise, and you know, where is the money? Okay?
9 Where is the money? Is that like a crazy thought? I don't
10 know.

11 And I say to you that you should be saying that to
12 the government in this case. Where is the money? Have you
13 seen it?

14 My client is broke, okay. He has been broke
15 throughout the time that he was on the street. And, according
16 to the government, at the same time that he is broke, he's in
17 control of this large narcotics organization.

18 We presented Jonathan Rice to show where the money
19 that he had to live on came from and why. He buys a car with
20 it but Jonathan Rice told him to do whatever you have to do
21 with that money -- you heard his testimony -- in order to move
22 yourself forward in this world of rap, of entertainment.
23 That's what you should do. He buys a car with it.

24 You know, in the defense exhibit with all of the
25 bank records from July of 2007 to the end of 2010, the

1 entirety of those bank records are in evidence if you want to
2 look at them. But we excerpted some of them for you for
3 you -- nothing other than your convenience. You can look at
4 all of them.

5 You will see the \$15,000 down payment on the car,
6 and then when Detective Martello was testifying about
7 different things in the case. He was that lead detective in
8 connection with the buy operation. I asked him about the
9 monthly payments on the car and does he know who made the
10 monthly payments. Look at the transcript. When I ask him,
11 doesn't Tanya Ambrose, the registered owner of the car, and
12 Ronald's girlfriend, make the monthly payments on the car? He
13 doesn't know. He has no answer. And I would say, go find
14 out. Know the answer.

15 You know, you are the detective. You are the police
16 working in a joint state and federal task force. The FBI
17 represents the federal government in that task force.
18 Prosecutors in the Justice Department are involved in this
19 investigation, working for the United States. Find out. You
20 guys are bringing this massive racketeering case against my
21 client. So do some investigation. Do some police work.

22 Where is this racketeer's assets? The man
23 supposedly has, Ronald Herron, Tyhe Walker, Jo-Jo Garcia,
24 Crystal Lewis, Musa Marshall, Rafael Gonzalez, Verdreea
25 Olmstead, Jose Valentin, Joseph Randolph, Shondell Walker,

1 they are all selling crack for him and who knows who else.
2 He's expanding, this drug empire, into Wyckoff. He must be
3 making tons of money.

4 Is he giving this money away to charity? Because
5 the guy has no assets. That is the evidence.

6 The crack trade in Gowanus is sewn up and he has
7 nothing to show for it. Uncle Murda buys the booze. He pays
8 for transportation. He finances the studio time. The guy in
9 the 30th Street studio, whose name is Dan the Man, who they go
10 to his studio to record their work, he charges Ra \$20 instead
11 of 50 to \$70 an hour because he doesn't have, according to
12 Uncle Murda. My client has to beg and borrow and ask Dan the
13 Man to do that for him.

14 He wants and seeks to attract investors. You heard
15 about Al Harrington. He's the one you heard about. Not just
16 from Ronald, but from Joseph Garcia, the government's own
17 witness.

18 Yet, despite all of this, the government has charged
19 him with being this major, major drug dealer, controlling this
20 lucrative crack trade and looking to expand into Wyckoff, to
21 make even more money, ready to fight a turf war to do that,
22 including committing murder to do that, to take over a new
23 lucrative drug market.

24 But he owns no real estate, no houses, no fleet of
25 expensive cars and motorcycles and boats, no bags of cash are

1 found, no suitcases containers, his car is not filled with
2 cash. He has a nice white BMW, which you know where that came
3 from. He drives around in a Navigator that's registered to a
4 former girlfriend named Hallima Whelless. There is no proof
5 he paid rent at Tanya's house, where he lived. He didn't live
6 in a lavish apartment on Fifth Avenue or in an expensive
7 apartment in Brooklyn and pay ten or \$15,000 a month rent.

8 None of this really computes or adds up or makes
9 sense. Because drug dealers have lots of money. Sometimes
10 millions of dollars in cash. And he doesn't have that.

11 And the government -- they go out of their way at
12 one point to point out that he had \$2,000 on him in one of
13 these kind of minor arrests, that he was arrested for, from
14 2007 to 2010. I don't even remember really which one. Maybe
15 it was the gravity knife or one of those arrests, that he had
16 \$2,000 on him. I mean, are you kidding me? So what, in the
17 context of what we are talking about in this case.

18 He can't afford a lawyer in the case. His lawyers
19 are assigned and appointed for him by the Court. There are no
20 bank accounts identified, no money is wired offshore, no
21 accounts in Switzerland or the Cayman Islands. Nothing of any
22 value is ever found on him. He doesn't flash large amounts of
23 money around clubs or public events he's at.

24 Knowing Ronald Herron, the kind of person he is, if
25 he had money, he is not the person or the kind of person that

1 would be looking for this kind of charity. He'd want to be
2 the man.

3 But he wasn't the man because, according to Leonard
4 Grant, Uncle Murda, he didn't have it like that.

5 So, okay, the government talked about Richard Russo.
6 I want to talk about Richard Russo. You know, trying to talk
7 about the evidence and the Richard Russo murder and the
8 evidence in the Richard Russo murder to say it in just the
9 most straightforward way totally shows that my client did not
10 commit that murder.

11 Now, I don't have any burden to prove that he is
12 innocent, but the evidence totally shows that Ronald Herron
13 did not commit that murder. That's what I am going to talk
14 about for a couple of minutes.

15 First, I -- again, there is zero, and you know, you
16 can't really like ignore this just because the government
17 talks about all these witnesses and how could this happen.
18 But there is zero physical evidence or scientific evidence
19 that connects my client to that crime. There are no
20 fingerprints, there is no DNA evidence, there is no ballistics
21 evidence, there is no fiber evidence. There is no nothing.

22 And, in addition to that, there is no reliable,
23 objective, concrete evidence, like a weapon found in his
24 possession that was used at the crime, no surveillance camera
25 that shows him, no confession. All of these pieces of

1 evidence that exist in the world, in the world of the criminal
2 justice system, are not here.

3 And as to the Richard Russo murder, there is no
4 reliable eyewitness who says my client committed the crime,
5 someone that you can invest in as a truth-teller, a reliable
6 person, because the only person that they have to tell you
7 that my client committed the Richard Russo murder is Rafael
8 Gonzalez. Nobody who comes in here and can objectively in an
9 unbiased way, with no cooperation agreement, report that my
10 client had anything to do with that.

11 Again, instead, there is Rafael Gonzalez, who is the
12 opposite of that and who you can't really invest in in terms
13 of what he says anything.

14 Now, to take it one step further, it is really not a
15 stretch to say, it's -- in this case that there is far more
16 evidence that Rafael Gonzalez killed Richard Russo than that
17 my client did it or that my client had anything to do with it.

18 That person, Rafael Gonzalez, is the only person
19 from whose mouth you hear evidence about my client in
20 connection with Russo.

21 First, you know, Ronald Herron, according to the
22 government's theory, is this drug kingpin who is trying to
23 reap profits at 423 Baltic by selling crack, and, you know,
24 killing people in the building where you are trying to run a
25 drug enterprise is really not that great for business and we

1 heard about that. But it's really not something to just be
2 ignored.

3 I mean, it is true, if they are saying this is what
4 he's doing, to make all of this money, then in the middle of
5 the day, to shoot somebody in an elevator at that very
6 location, is going to bring a heck of a lot of police
7 attention to the building and is going to result in you not
8 being able to make money there. So from that standpoint it
9 just doesn't make any sense.

10 And also, the idea that Ronald Herron would kill
11 this man in the way that they described or that not they, but
12 Rafael Gonzalez described, and for the reasons that he
13 described, totally defies common sense and really can barely
14 hold up under even the most slight analysis.

15 I am asking you to do more than slight analysis, but
16 that's the reality. Ronald Herron doesn't even know this guy,
17 Richard Russo.

18 But the evidence you heard is that when Gonzalez
19 comes home from jail in July of 2007, at some point he's heard
20 from his family -- 1582 -- he's heard from his family that his
21 family has had some kind of beef with Russo, that the two
22 families are having these problems because Feo's older brother
23 Mito is playing music too loud and Russo is going up there and
24 complaining about it.

25 And Feo learns this and he learns also -- and this

1 is all laid out here in 1582, in the transcript where Russo
2 would complain about it.

3 Right. Yes. That's what this is all about.

4 Your brother would keep playing the music loud,
5 right?

6 Yeah.

7 And you learned this while you were in prison,
8 right?

9 Yes.

10 So that's what he's talking about.

11 And then on page 1583, he says, also, that he
12 learned that not only was there this problem but that Russo
13 actually went so far as to pull a gun on his brother, Mito,
14 over this beef, that was going on between them.

15 That's on page 1583 of the transcript, where Rafael
16 Gonzalez acknowledges that, your brother -- Russo actually
17 pulled a gun on your brother at line six and correct, yes.

18 (Continued on next page.)
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1 (CONTINUING)

2 MR. SOLOWAY: Okay, so, Feo learns all of this and
3 that he actually does this and when Feo is released from
4 prison, he says you know, he's now makes the acquaintance for
5 the first time of this guy Russo and one of the things that
6 happens, happens that's relevant, a few days before Richard
7 Russo is murdered and you heard about that when Mr. Nitze was
8 talking, Russo is bad-mouthing Ronald. He says he doesn't
9 like him. Herron is not so tough, you know, that he's not
10 afraid of him and if he, Ronald Herron confronts him, Richard
11 Russo, Russo's going kill Ronald Herron.

12 And it's a result of hearing these things Gonzalez
13 decides that he's going to go upstairs and get a gun so he can
14 shoot Russo. That's at 1439, 1539 something like that, 1493,
15 yes. On direct examination by Mr. Ariail we have this
16 particular piece of evidence. What did you talk about and
17 Gonzalez says that Russo brought it up to me. He was talking
18 and he was like yo, you know your man and all this kind of
19 things and at the end there, line eight, like if he confront
20 me one day or he cross the line, I'm going to kill him.

21 Okay. So, then at the bottom of the page, right, I
22 told Tyhe at line 23 that I'm going upstairs, get the gun and
23 bring it back down and I'm going to shoot him a couple of
24 times and kick him out of the building. Okay, and this is
25 Rafael Gonzalez talking. Now, on cross, Gonzalez sort of

1 changes his story a little bit and says he wasn't going to go
2 get the gun himself, but he told Tyhe Walker to go get it,
3 that's on page 1584. Talks about this again. And this is the
4 story from Rafael Gonzalez, right? He says that he is going
5 to go upstairs, all this bad-mouthing was going on. He says
6 at the bottom at line 24 I didn't say I was going to get it,
7 Tyhe was going to get it, but that's not really what he said
8 on direct. I don't know if that doesn't matter very much.

9 But on page 1585 of this transcript again he says I
10 was going go get this gun or have Tyhe go get it for the
11 purpose of shooting Richard Russo. And what else is important
12 here is that this is a couple of days before Russo is killed
13 and according to this witness, Ronald Herron learns about
14 this. He hears about these things that Russo is saying. And
15 so he just executes Richard Russo in the elevator at 423 for
16 saying these things about him because he is such a vicious
17 monster.

18 And Gonzalez says that he's not aware of any beef
19 that Herron ever had with Russo. He's not aware that Russo
20 ever had any problem or beef with Herron or anyone in Herron's
21 family, so of course this murder is just a vicious, senseless
22 assassination by Ronald Herron because of something, some
23 words that Russo is saying about him because if someone talks
24 disrespectfully about Ronald Herron, he will just immediately
25 pull out a gun and kill you. That's the story here. And I

1 have a few thing to point out about that.

2 So, first of all, is that the way he seemed to you?
3 Is that the human being he appeared to be when he testified at
4 the trial, number one? Because not only does it not make any
5 sense for him to commit this crime, but the evidence is that
6 he didn't have anything to do with it. He doesn't know the
7 guy. He's not a rival drug dealer. He has no beef with him.
8 They've never fought before. They've never even presented any
9 evidence that he ever had any interaction with the guy at all.

10 And in addition to that, you heard from Joseph
11 Garcia, as Mr. Nitze pointed out on his summation. And what
12 did Joseph Garcia, what testimony did Joseph Garcia give about
13 this? It's important. He gives a bit of testimony about it.
14 He says that the day when Richard Russo gets killed, he's
15 around. He's in the building. He's in the lobby. Other
16 people are around, too. And what he describes in the trial
17 here is really just more evidence -- that is, Joseph Garcia's
18 testimony -- is more evidence that Ronald Herron had nothing
19 to do with the death of Richard Russo.

20 And I want to be very clear, I'm not suggesting here
21 that we credit the testimony that Joseph Garcia gave at this
22 trial with respect to the things he said about Ronald Herron
23 selling drugs, supplying drugs to him, controlling the
24 drug-trafficking in Gowanus, but there's evidence that comes
25 from Joseph Garcia's mouth at this trial about the Richard

1 Russo murder and I want to point out to you what it is.

2 So, first, what Garcia says, he describes being in
3 the lobby and seeing Herron and others down there, including
4 GIB and Feo and some guy he identifies as Rich. And he says
5 there comes a time that he sees Ronald talk to GIB and you
6 remember GIB is Tyhe Walker, the guy in the bushes, and he
7 describes how after he sees this, he returns to the 7th floor
8 where his aunt Verdreea lives and he later learns that learns
9 that there's been a shooting, someone has been killed.

10 And he also describes a conversation he has with
11 Rafael Gonzalez after the murder of Richard Russo in which
12 they're kind of talking about wow, you know the police are
13 around and it's kind of difficult for us to do our business
14 here, it's hot, the building is hot. And this is 1330 of the
15 transcript. And he describes or says that this is the
16 conversation he has with Feo about a shooting. And it starts
17 at line 19, what I'm talking about.

18 Did you ever have a conversation with Feo about the
19 shooting?

20 ANSWER: Yes.

21 When was that?

22 A couple of weeks later.

23 And what, if anything, did he say to you, what did
24 Feo say to you?

25 He said I see him come in the building kind of

1 asking me how the police presence has been or whatever.

2 And describing it to him and what Garcia's saying.

3 Then there's a question at line 8 on direct -- I'm sorry,

4 going up here. He talks about and he just casually

5 apologized, Feo did, right, in talking about this police

6 presence in the building. Then he casually apologized saying

7 you know, my bad, bozo Blood had to go. And that's what

8 Joseph Garcia says Feo told him in this conversation about

9 what's going on at 423 after the murder of Richard Russo.

10 Now, on cross-examination there's another bit of

11 testimony about this because he says something, he says a

12 little bit more. He describes what else he saw at 423 Baltic

13 on the day Richard Russo was killed, and this is 1356 of the

14 transcript. This is Joseph Garcia again describing that he's

15 in the lobby with Tyhe Walker and others, and Feo comes in at

16 some point and Ronald Herron comes in at some point. Right?

17 And then there's a time where he describes how GIB says

18 something like I'm leaving, I'm going downtown.

19 And at the top, at line four, I ask him okay, does

20 GIB actually leave to go someplace after saying he's going

21 downtown.

22 He says yes.

23 And then Garcia describes how he does leave and he's

24 asked about whether he saw Herron leave with GIB and he says

25 no.

1 QUESTION: Or anyone else; right?

2 That's correct.

3 QUESTION: But you don't really know what Herron
4 did. You don't know if he went out the back door of the
5 building, too, at some point; right?

6 ANSWER: (Of Joseph Garcia) That's correct.

7 And what happens after that? After that is that
8 Joseph Garcia sees, and this is the last thing he sees, Feo,
9 Rafael Gonzalez and Richard Russo in the lobby of 423 alone.
10 And what happens next with Joseph Garcia is he goes upstairs
11 to the 7th floor, leaving Russo and Feo alone in the lobby and
12 five minutes later, he hears what he believes is a shot at
13 1357, right, of the transcript that's available to you.
14 Right? So he says when you leave, on 1356, when you leave,
15 Feo and Russo, that's at the bottom, right?

16 QUESTION: And when you do that, you leave Feo and
17 Russo in the lobby; right?

18 1357.

19 ANSWER: That's correct.

20 And five minutes later after you get out on seven,
21 that's what you hear what you believe is a gunshot; right?

22 That's Joseph Garcia's evidence. Right? GIB
23 leaves. He doesn't see Ronald Herron; right? Ronald Herron,
24 as far as he knows, as far as he says, wasn't there. Could
25 have left, he doesn't know. But what he does know is Feo and

1 Russo are there alone.

2 And what do you know about Rafael Gonzalez? You
3 know, Rafael Gonzalez described when he was testifying here a
4 crime that he committed shortly before he was arrested two or
5 three or four months before he was arrested. You may not
6 remember this, you know this is a lot of testimony here, of a
7 guy by the name of Dave the weed dealer in some neighborhood
8 in Brooklyn. And he described how he got a gun to do that
9 robbery. He described how he found out this guy Dave the weed
10 dealer was selling weed.

11 He contacted him to buy some weed from him. He got
12 a gun from a guy named Slick to do the robbery to scare Dave
13 up to get the weed from him. And he did all of these things,
14 what he said, by himself. It was a robbery that he did
15 himself with a gun that he had by himself that he did, planned
16 and executed entirely on his own. And it's very easy for Feo,
17 given all of these things that happened to him in relation to
18 Richard Russo and based on the evidence in this case that's
19 before you to kill Richard Russo himself in that elevator.
20 Okay.

21 All of this stuff about Diane Flowers that the
22 Government talks about, about Ronald Herron having a car the
23 next day, that Diane Flowers owned, that Feo said we went to
24 Caton Avenue and we gave the gun and the car was switched.
25 All of that stuff that the Government thinks is so important

1 they're corroborating, that comes from Feo, okay? That's
2 where that comes from.

3 Ronald Herron, this is his sister, you know. He
4 uses her car, he uses her car regularly. The fact that he's
5 in that car the day after the Richard Russo murder doesn't
6 prove anything. That's like saying you can have a complaint
7 of the robbery, go to the police and say, my God, I got robbed
8 in Central Park, and the police can say to you where did you
9 get robbed, in Central Park, and can you show us where? Yeah.
10 It was by an oak tree. You know, okay, great. So, you go
11 with the police you go back to Central Park as a complainant
12 in the robbery case, you walk into Central Park, see there's
13 an oak tree, oh, there's the oak tree, that proves I was
14 robbed.

15 You know there's corroboration and there's
16 corroboration. The fact that Feo says all of these things
17 that happened, that we get into the Navigator, we drive to
18 this particular location, we go to this particular apartment,
19 that's, that doesn't prove that happened. Again, we don't
20 concede any of that. That's just what he says. Ronald Herron
21 was not there and the fact that he's making up this story, and
22 this is a story that he doesn't tell until February of 2012 to
23 law enforcement, that's the first time he ever accuses Ronald
24 Herron of committing this crime, okay? To law enforcement.

25 He says in February 2012 when he's arrested, facing

1 serious narcotics crimes, that he's going to go to jail for,
2 for a very long time, he accuses to Detective Fazzino in the
3 76th Precinct, Ronald Herron, of killing Richard Russo. In
4 April of 2014, he picks out Diane Flowers's photograph as the
5 lady who owns the house where they went to.

6 You know, Diane Flowers is somebody that lived in
7 Gowanus for years and years. The Government shows Diane
8 Flowers's picture to Gonzalez in April of 2014 and he says oh,
9 yeah, she's the lady that did it. You know, he knows who
10 Dianne's Flowers is. He grew up in Gowanus, she was around
11 Gowanus all the time. She looks at the picture. That's
12 Ronald Herron's sister. He doesn't say that. He says that's
13 the lady who did it. Great. Does that prove that Ronald
14 Herron did this crime, any of that taken together, separately,
15 whatever parts you want to put it in? The answer is no, I
16 submit.

17 You know what else makes the answer no? Is that Feo
18 has a motive. The Government is saying oh, Ronald Herron is
19 like his big brother, like his father, et cetera, et cetera,
20 whatever all those things are that they're saying. And you
21 know you heard about the video that was made, We All Fucked
22 Up, the music video that Ronald made. And I'm not going to go
23 through this in any great detail, but you heard evidence from
24 Feo, from Rafael Gonzalez that he expected that day to be in
25 the video rolling the dice and in the dice scene that begins

1 the video, there are all these different parts in the video
2 that he could have had that he never got. He was offended by
3 that. He was upset by that. He felt resentful by that. And
4 you could say and the Government will probably get up on
5 rebuttal because they have another opportunity, you know
6 Soloway's crazy. Are you going accuse somebody of murder
7 because you didn't get to roll the dice in the video?

8 And what I have to say about that is that you have
9 to think about, when you think about this and when you analyze
10 this, not just any particular person on the street that you
11 might want to be analyzing but Rafael Gonzalez. That's the
12 person we're talking about. Because Rafael Gonzalez is a
13 person who has, I guess, I'll just say very little in his
14 life. He's not going very far in life. He has very little in
15 his life and when you are that kind of person and that's the
16 kind of life you have, this is the kind of thing that's very
17 important to you. You're going to be in a video. You're
18 going to roll the dice in the video. You're going to be
19 invited on to the bus.

20 Because Ronald Herron, unlike Rafael Gonzalez, is a
21 person that's going places in life. And so when he's slighted
22 by Ronald Herron that day in the way that Rafael Gonzalez
23 describes, it's very big for him. You know, he talked about
24 it on the street with other people. That's why we talked
25 about it in court. Because we knew about it. Because it was

1 something that was really bothering him. And he was really
2 upset about it. And because of the kind of person that he is,
3 he was so upset about it and so angry at Ronald Herron for
4 this, that yes, it is the kind of thing that will contribute
5 to a motive for a person like him to accuse Ronald Herron of
6 doing something, even murder, that he didn't do.

7 You know, Angel Figueroa also kind of factors into
8 this whole story here about Richard Russo in a way. Because
9 it's kind of worth mentioning at this point that Angel
10 Figueroa is alive and well and I've got to tell you that if
11 Ronald Herron is really the vicious monster that the
12 Government makes him out to be, how could that be? Because
13 you know that Mr. Angel Figueroa in 1998 and 1999 had this
14 relationship with Ronald Herron. They liked each other. And
15 he informed on Ronald Herron, told the police where Ronald was
16 when they were looking for him for this 1998 Wyckoff shooting
17 that Ronald was arrested for in March of 1999.

18 That happened in September of 1998 in March of 1999
19 because of Rafael, because of Angel Figueroa, Ronald was
20 arrested. And Ronald Herron, the guy that you just have to
21 say bad words about and he will take a gun and put it to your
22 head in an elevator and execute you didn't do anything to
23 Angel Figueroa.

24 Ronald Herron was detained on Rikers Island from
25 March of '99 to May of 2000, 14 months because of Angel

1 Figueroa. Comes out of jail and he tells his cousin Tom-Tom
2 this guy betrayed me, I don't want him around anymore. He
3 doesn't kill him. He doesn't shoot him. He doesn't stab him.
4 He don't break every bone in his body or even some of them.
5 He runs him out of the neighborhood because he is six four,
6 240 solid, like he says in the music. And that's what he
7 does.

8 And Angel Figueroa, despite everything that he says,
9 including that nonsensical story that I'm going to talk about
10 in a few minutes of Herron abducting him and forcing him to
11 sell heroin in 272 Wyckoff in May of 2008, is alive and well,
12 very well other than that he's in jail.

13 So, this witness is a witness that the Government
14 presents to you, Angel Figueroa. This is a witness who does
15 these things to Ronald Herron who Ronald Herron says I never
16 liked the guy and Figueroa says about Ronald Herron, I never
17 liked him. Now, that's not what he said on direct. He said I
18 didn't like him at some point, but there's a stipulation that
19 say, there's agent's notes where Figueroa said about Ronald
20 Herron I never liked the guy. Ronald Herron never liked him.

21 But this witness, who the Government presents to you
22 and his story that the Government presents to you is entirely
23 contradictory with the concept that Ronald Herron would commit
24 this murder of Richard Russo the way they've described. Now,
25 it's just more proof that Herron is not the person they argue

1 that he is. It's not consistent with the tiny package that
2 they present ever consistent.

3 Now, the Government has the power to use whatever
4 words they want and they have the power to explain what
5 happened and why people did things in any way they want and
6 they can get up here and they can say to you from beginning to
7 end, today, tomorrow, next week, next month, everything Ronald
8 Herron did he did because he's a vicious murderer. But again,
9 I just come back to the point that it's really up to you to
10 analyze for yourself whether or not that is consistent with
11 the evidence you've heard.

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13 (Continued on following page.)
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1 MR. SOLOWAY: Okay. Now, I have to just touch on a
2 couple of things that Figueroa said because he was an
3 important witness for the government. He's a guy who comes
4 home from parole in March of 08 and he's only on the street
5 for two months you may recall. He's a guy who comes home in
6 March of 08, after spending about five years in state prison
7 for drugs and he immediately goes out and sells drugs as soon
8 as he gets out in March and on May 6 of 2008 he gets caught
9 selling heroin at 272 Wyckoff Street.

10 And he tells the story about how Ron abducted him
11 off the street with two people he doesn't identify and forced
12 him to sell drugs at 272 Wyckoff. It seems like there's a lot
13 of people around Wyckoff and Gowanus that are dying to go out
14 there and sell drugs. The idea that you abduct somebody and
15 post somebody in the lobby of 272 Wyckoff to make sure they
16 sell the drugs you give them instead of running away when you
17 have all these people, why? Because he needs the money?

18 Is it because he wants to do something bad to the
19 guy to hurt him? I mean this is a guy, you know, that goes,
20 this Figueroa guy, that goes in front of a judge in October
21 1999 and pleads guilty on a case where he was arrested in
22 apartment 4 E at 423 Baltic for drugs and pleads guilty with a
23 promise of probation and he gets probation in November of '99.
24 Five years probation.

25 And he at that very moment in his life is in the

1 middle of a conspiracy to sell guns that goes on at that very
2 time. Right. You look back at the evidence, September,
3 October, November, December of 1999. That's what he was
4 doing. You know, I'm not going to go through it in any great
5 detail.

6 This is a guy that blatantly lies about his
7 interview with the probation officer Michelle Statler, now
8 called Michelle Power. Just for a minute, you remember,
9 because it says something about the government's case. Like
10 it says something about the kind of people we're talking about
11 here. I don't want to do this in any way that -- there's
12 things that are important in certain ways. You know, Angel
13 Figueroa gets arrested in February of 2003 in Staten Island on
14 Oder Avenue in possession of 8 Ziploc bags of crack cocaine
15 and that's the case that you'll recall he described how the
16 police came and they arrested him and he was going to go into
17 a drug program and he messed it up and the judge gave him four
18 and a half to nine years in state prison. Right.

19 When I was asking him questions about the fact that
20 he was on federal supervised release at the same time all this
21 was going on for this gun trafficking case he had, he said --
22 I asked him, Well, you know, the probation officer who was
23 supervising you on your federal supervised release she wanted
24 to talk to you, right? So she made arrangements for you to
25 come to her office on Livingston Street with an escort from

1 the drug program and be interviewed about what happened on
2 Oder Avenue in Staten Island in 2003. And the guy says, when
3 I asked him: Hey, you know, didn't you say that when you
4 spoke to the probation officer, that the drugs were planted on
5 you by the detective? He says, no. No. I never said that.
6 Didn't you say you were completely innocent? No. I never
7 said that. Didn't the interview happen on Livingston street
8 with an escort? No. I never said any of that.

9 Then we brought Michelle Power in. We brought
10 Michelle Power in. This is what Michelle Power just said
11 about her interview with Angel Figueroa on that August date, I
12 forget what it was, 2000 and something, when she said the
13 exact opposite of what Angel Figueroa said. Right. On August
14 18, 2003, the subject was -- this is what she said, Angel
15 Figueroa told her when he came to be interviewed for the
16 purpose of preparing a report about the supervised release
17 violation.

18 He was permitted to leave Samaritan Village with an
19 escort and meet with the undersigned officer. He informed
20 that on the day of the arrest he was in a Staten Island
21 residence. That his cousins were arguing about who would use
22 the home and one of them called the police. He said that the
23 police, right, responded and found cocaine, searched everybody
24 and asked if anyone was on probation or parole. He replied
25 yes. And the police then they planted the cocaine on him and

1 then he informed that no marijuana or drug paraphernalia was
2 found. He declared his innocence to the Probation Department
3 and explained that he pled guilty because he would have gone
4 to jail had he not -- he would have gone to jail if he not.

5 This cooperator, this witness of the government's,
6 gets on the witness stand and that's the way that goes, right.

7 And now the point of all of this really is that when
8 Angel Figueroa was on the witness stand right there and I was
9 asking him these questions right there, saying didn't you say
10 these things to the probation officer? Didn't you say this
11 and this and this to the probation officer? He said no. I
12 never said any of those things. And he was lying right to
13 your faces.

14 He was lying and when he was doing that there was
15 not really too much I could do about it at that point. We
16 hadn't heard from Michelle Power yet. And when he was up on
17 the witness stand there and he was saying these lies, it's not
18 like the sky opened up and a bunch of angels came down or
19 there was any big sign that lit up, a neon light with a big L
20 flashing over it for lying and the floor didn't open up below
21 him and swallow him up at that point. It just looked like he
22 was telling the truth and it was not revealed that he was
23 lying until Michelle Power was called and said that.

24 Now, this guy is a government witness and I know
25 that really in the grand scheme of things and in the context

1 of this person's life of crime and dishonesty it's really far
2 from the worst thing he ever did. I wouldn't suggest that it
3 is. The guy has done everything in his life to advance and
4 promote his self-interest and has lied to probation officers
5 and judges and other officials of the government always. So
6 it's really not the most significant thing.

7 But, you know, it shows you something about how this
8 prosecution is going against my client and that's why I'm
9 really talking about it. It's a part of how this cooperation
10 thing, this process works. And it's important because really
11 in this case what the government has used to prosecute my
12 client really to the exclusion of all other law enforcement
13 techniques is turning cooperators to testify against him,
14 people that are totally unreliable. That's why it's
15 important. People whose lies they can't control.

16 Although they say they can, they pretend they can,
17 with these pieces of paper that they call cooperation
18 agreements, that make these people in some way magically, some
19 magic serum, truth elixir, these are people that you can rely
20 on. This is an argument they made. Mr. Nitze just made it.
21 It's a lot of things. It's fascinating.

22 You know, you are talking about, when you talk about
23 these folks, these cooperators, you're talking about people
24 whose whole lives very often have been filled with committing
25 crimes. You know they say I'm living in a fantasy world. And

1 you know there's really nothing that -- the lawyers obviously
2 are not witnesses. The lawyers are not there when these
3 things are all happening and the witnesses are the witnesses.
4 Some of these people like Angel Figueroa, they just live the
5 life of lying and committing crimes their whole life. And now
6 the government argues to you that's all changed because of
7 this piece of paper.

8 But the truth is, real truth, is that these people
9 are risk takers, right. These are people who have spent their
10 life making decisions to act in their self-interest at the
11 expense of other people in ways that violate the criminal law
12 and to take the risk that it's going to benefit them. And
13 when they do that they deal with the moment. They live in the
14 moment. That's the kind of people they are. Whatever is
15 dictated by the moment that they think will help them, that's
16 what they'll do. And that's the thing that the government
17 doesn't have control over.

18 Okay. I want to talk about Crystal Lewis for a
19 moment. That's really where I'm going to try to talk a little
20 bit about and kind of the last thing I want to talk about,
21 you'll be happy to learn, about this cooperation process.
22 Because Mr. Nitze spent some time on it in the end and I'm
23 going to respond to it in a certain way.

24 And before I do that I just want to talk for a
25 second about something else that's really important in this

1 case and which I think is kind of mountainous importance to my
2 client. That's the lack of evidence in this case, what I call
3 the lack of evidence. Because the government here has brought
4 a prosecution against my client and has failed to bring you or
5 to even try to bring you or to explain its failure to bring
6 you, any sort of concrete evidence that he's the person who
7 these criminal witnesses say he is.

8 They, the government, law enforcement people
9 involved in this case, they failed to try to buy drugs from my
10 client or to introduce an informant to buy drugs from him.
11 Why? Why? I don't know. There's no explanation. They
12 failed to try to sell him drugs with an undercover police
13 officer or an informant. Why? There's no explanation.

14 They failed to try to get a wiretap and to intercept
15 and record his phone calls for you to listen to and make
16 conclusions for yourself about what's going on in his life at
17 that time.

18 Drug dealers use phones. You've heard. Mr. Nitze
19 referred to the fact that Crystal said here's my number and
20 she says here's my number to the undercover because she wants
21 him to call her when he wants to buy drugs.

22 And by not getting this kind of evidence, they are
23 insulated against what that evidence would reveal to you.
24 They prevent you from knowing what this evidence would show.
25 They have denied you the kind of proof that would provide

1 important information to you and inform your deliberations and
2 assist you in deciding this case accurately and justly.

3 And what's important about that is something that
4 you should try to remember. You know, my client, Ronald
5 Herron, sitting all the way over there, whatever else he has,
6 he doesn't have a police force. He was not in a position to
7 get a wiretap on his own phone to prove he's not a drug dealer
8 and a murderer, just in case the police might arrest him one
9 day. He just wasn't.

10 They are the police. They are the ones who brought
11 serious criminal charges. They are the ones with the burden
12 of proof to show that he's engaged in these activities that
13 they have charged him with. And if they don't do the police
14 work to accomplish these goals for you during the
15 investigation that reason and common sense shows would provide
16 important evidence about what was going on in this case, you
17 know, my client is not the one to blame for that.

18 What's also important is that you are entitled to
19 consider that the reason that you don't have this kind of
20 evidence in the case is because they didn't bother to try to
21 get it for you and they didn't bother to get it for you. And
22 although the judge is going to tell you -- and he is going to
23 tell you -- that the government is not under any burden to
24 utilize any particular kind of investigative techniques in a
25 particular case, it's also true that there's a burden of proof

1 here and it's proof beyond a reasonable doubt and you are
2 entitled to and you are under a duty in reaching your verdict
3 here to consider the evidence and the lack of evidence in this
4 and all criminal cases in deciding whether the government has
5 met its burden of proving my client is guilty.

6 And you should do that. So when you are in the jury
7 room, use your reason and your logic and your common sense in
8 the jury room and think about and discuss the kind of evidence
9 you have in this case and the kind of evidence that you don't
10 have. Just talk about it in the jury room and come up
11 yourselves as to what it means and doesn't mean in a case
12 where my client is charged with being the head of a narcotics
13 organization from 2007 to 2010 and is supposedly this enormous
14 drug dealer and is never caught with any narcotics, these
15 things matter. Never seen supplying narcotics to anyone,
16 receiving narcotics from anyone. These are not just words.
17 These are facts. These are reality and they contradict the
18 government's theory of this case.

19 So you are entitled to think about what it means and
20 to debate what it means as a juror in this case, this kind of
21 evidence, the lack of this kind of evidence. No seizures, no
22 surveillance of the defendant engaged in narcotics activities.
23 No major assets identified. No wiretap evidence, no
24 undercover buys or sales. No tape-recordings of the defendant
25 in any narcotics deals.

1 And so that leads me to what I said I was going to
2 talk about at the end, which is that when you get right down
3 to it, the brass tacks of this case, leads you to realize that
4 all of these investigative techniques were not employed that
5 might yield evidence of what was going on in this case and
6 instead one kind of investigative technique is the technique
7 that the government decided to rely on in this case, to the
8 exclusion of all others, and that's cooperating witnesses
9 testifying pursuant to leniency deals, criminals, facing
10 crushing evidence of their own crimes and lengthy prison
11 sentences if they did not testify.

12 Now, Crystal Lewis is someone that I want to talk a
13 little bit about because Crystal Lewis is an example of what
14 really goes on here and I want to talk about her because of
15 that.

16 You know, you heard from Crystal Lewis. There she
17 is, Crystal Lewis. These are all the people that testified
18 against my client there, these cooperators. The government's
19 word cooperators. They like that word. Cooperate is a word
20 that we all like. It's kind of warm and fuzzy. We like
21 people who are cooperative. When our children are cooperative
22 we reward them. When someone is cooperative at work, we give
23 them a raise. Cooperative. Cooperators. Oh. It's nice.

24 You know, Crystal Lewis gets arrested after a few
25 months as a fugitive and it's no secret that she's desperate,

1 right, to get out of jail? She misses her child. You heard
2 her testimony. I miss my child. My child is everything to
3 me. I can't stand to be without her. I have to get home.
4 That's her overriding goal, right.

5 But she can't get bail and she can't get out. And
6 the government opposes bail and they win and instead of
7 getting bail what happens to her she tells you at some point
8 is that in June of 2012, after being in jail from February of
9 2012, about four months of detention, she's suddenly brought
10 to the courthouse without her prior knowledge to meet with
11 agents and prosecutors by her lawyer. And she doesn't say
12 what the government wants to hear. This is the message she
13 receives in the form of the government agents' words and this
14 is 2404, please.

15 This is Crystal Lewis talking about the day that she
16 went to meet with, without her knowledge, agents and
17 prosecutors of the government in this courthouse. And what
18 happened is that what she says here, right.

19 You said you didn't want to talk about anything at
20 the meeting relating to the criminal activity of other people,
21 right? Yes.

22 And at that point at least one of the agents became
23 frustrated with the answers you were giving, right?

24 "ANSWER: Yes."

25 And he told you words to this effect: I'm going to

1 put all of these charges on you and I will make sure that you
2 will never see your daughter and your family again, isn't that
3 correct?

4 "ANSWER: Yes."

5 (Continued on next page.)
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1 MR. SOLOWAY: (Continuing)

2 And you took that as a threat, didn't you?

3 Answer: Yes.

4 And you became very scared, didn't you?

5 Answer: Somewhat.

6 Question. Scared, right, that's the word?

7 Answer: Yes.

8 Now, this whole cooperation process that the
9 government tells you is a tool of truth seeking and that the
10 government puts before you in this case, you have to decide
11 whether or not it has produced reliable evidence, evidence
12 that you can rely on, to send my client to prison for the rest
13 of his life.

14 But there is really more to this than just this.
15 Because Crystal Lewis goes back to jail after this meeting and
16 she gets a new lawyer, she tells you, and in September of
17 2012, we learn that she and her lawyer go to court to try to
18 convince the judge, over the strident objection of the
19 government, that she should be released on bail.

20 That's 2384. This is what Crystal Lewis says about
21 that.

22 At the hearing you had been in jail at that point
23 for about seven months, right?

24 Answer: Yes.

25 And you really wanted to get bail, right?

1 Yes.

2 And at that time the government was opposing?

3 Yes.

4 In fact, they were stridently opposing bail for you,
5 weren't they?

6 Answer: Yes.

7 Notwithstanding that, you, together with your lawyer
8 made a decision, even though the government was in opposition,
9 you would try to convince the judge to grant you bail, right?

10 Answer: Yes.

11 Now, next page.

12 There is a period of time in your case, Ms. Lewis,
13 by the way, you didn't get bail, right?

14 Answer: No.

15 And that's the end of that section about her bail
16 hearing.

17 It is only at that point, after all these things
18 have happened to her, that she starts voluntarily to meet with
19 the government in the quest of getting a cooperation
20 agreement. Remember, the Special Agent who is here in court
21 testified that she started attending proffers sometime like in
22 the middle of October, a month or so after this bail hearing
23 happens in 2012.

24 And she knows, she testified, from public
25 announcements in court that she is charged with working for

1 Ronald Herron and also she is charged with having a leadership
2 role in his organization. This is 2415. I will show that.

3 2415, where she says -- this is when she comes to
4 court for the first time. You can look at these transcripts.
5 She hears that she is charged with a ten-year mandatory
6 minimum narcotics distribution case and at line nine she says,
7 that's pretty devastating news.

8 At line 15, and the government claims that in this
9 case in which you were working for Ronald Herron, the
10 government claims that you had a leadership role in the
11 operation?

12 And that's what happens to her. So she knows from
13 the very first day of her case what the government is say and
14 announcing, and ultimately when she starts proffering in
15 October of 2012, it leads to, very quickly -- I'm sorry,
16 2011 -- to a cooperation agreement.

17 And then after she gets that cooperation agreement,
18 after a few months of trying, she goes back to court for
19 another bite at the bail apple. And that -- and this time,
20 cooperation agreement in hand, the government does not oppose
21 and she gets out on bail.

22 And she goes home and she has been home ever since
23 and you can look at the transcripts and you will see that.

24 Now, you have to decide what to make of all of that.
25 That's your job.

1 The government says, this whole process is about
2 seeking and securing the truth, presenting the truth. Taking
3 these kinds of people and putting the screws to them in this
4 way, yields the truth and information that you people can rely
5 on.

6 Okay. And with due respect to the prosecutors and
7 agents, all of that defies logic and reason.

8 But you should be the ones to decide. Don't take
9 their word for it. Talk about it. Not just with Crystal
10 Lewis and come to your own conclusion. Talk about it with
11 respect to all the witnesses. And come to your own conclusion
12 and decide if these tactics of the government deliver the
13 truth, deliver reliable evidence.

14 Now, I really don't want to you get me wrong here.
15 I am not suggesting that these prosecutors or any of these
16 agents that are involved in this case, accusing them of any
17 wrongdoing. Okay. I am not saying that they are deliberately
18 trying to force or coerce or deliberately pressure people to
19 lie. I am not saying that.

20 But what I am saying is that they are wielding these
21 methods and when they do that, when they wield these methods,
22 different things happen.

23 Now, again, most of the evidence in this case, you
24 know, comes from these people, these people who have committed
25 the crimes that they have said they committed. There is no

1 real other kinds of proof. And you know, the -- so really --

2 Okay. You know, in a nutshell, boiling it down, I
3 would say that when you analyze this, that these methods and
4 tactics are really the enemies of the truth. They are the
5 opposite of a process that can be relied on to deliver the
6 truth.

7 Because these tools that are wielded against these
8 criminals, they are in a way, they have the tendency to be
9 received by these people as coercive and the people that they
10 are wielded against, they are weak people in many cases. They
11 are vulnerable people, and they are also unscrupulous people
12 and these people want to do what they believe is going to help
13 them, regardless of whether it involves telling the truth or
14 not telling the truth.

15 And these people know what the government wants to
16 hear. Because you heard from the witnesses that when they go
17 to court, the government says from jump street in this case
18 that these people are guilty and what they are guilty of is
19 selling drugs for Ronald Herron and aiding him in acts of
20 violence.

21 So people like Crystal Lewis, she spends from
22 February 2012 when she is arrested until September -- I'm
23 sorry -- February 2011, desperately wanting to go home and she
24 has no criminal record. She has never been in jail before.
25 She is told she is facing a lot of time in jail.

1 This particular terrifying situation that she finds
2 herself in is what is going to happen to her unless she gets a
3 cooperation agreement by saying that's the guy that I worked
4 for.

5 Now, as soon as she says that, it's kind of like
6 rubbing the magic lamp that Genie comes out of, because she
7 goes home and if she didn't say it, where would she be?

8 The answer to that is obvious, and that is what
9 happened to Crystal Lewis, the genesis, the origin, of the
10 kind of proof that the government tells you you should rely on
11 here, to send Ronald Herron to prison.

12 And the problem with all of this is that this whole
13 process that the government uses and talks about in the way
14 that they do is really about two things. It is about hope and
15 it is about power. Okay.

16 Starting when they get arrested, these witnesses,
17 these criminals, that the government has called as witnesses
18 here, they learn and recognize the awesome power that the
19 government has over them and they have hope that they can
20 please the government and the agents of the government so that
21 these people will be happy with them and help them.

22 So their desire or their motivation is to please the
23 people who have this power over them.

24 I want you to think of it in a different way for a
25 second, like imagine in some other alternate parallel universe

1 what would happen if I had the power to let these people go
2 home.

3 If I had the power to let these people go, those
4 witnesses would say what they believe I want to hear, in the
5 hope that I would be satisfied and they would not be thinking
6 about what the truth is or what the not truth is. They would
7 be thinking of the things that I just described.

8 Because that is the kind of people that we are
9 dealing with, and it is, I submit to you, at best naive of the
10 government to come in here with this case and tell you that
11 they have transformed these people, not transformed them
12 morally, but transformed them into truth tellers, people that
13 you can rely on, because the way these people work is not like
14 that. Whoever has power over them, that's who they cater to.

15 Now, these people are unreliable and they are
16 unreliable just because that is the kind of people they are.
17 They are like kind of unguided missiles in certain ways. You
18 know, they have their own agenda, and the government really
19 makes believe that they have the power to control the agenda,
20 the power to control the impulse it is these people have to
21 lie, to lie to get what they want.

22 But it is really not true. You know, it is not
23 really that difficult for Joseph Garcia to describe exactly
24 everything that he ever did in his life, involved with selling
25 drugs, and to just change one single fact, which is, I did it

1 for Ronald Herron. All he has to do is say, every day, I was
2 out on the street in the project in Gowanus, selling drugs.
3 Because that's what he was doing every day out on the street
4 in Gowanus.

5 And all he has to do to satisfy the government to
6 get out of jail and out from under the mandatory minimum
7 sentence he is facing is to say I did it for Ronald Herron.

8 All of the explanations that Ronald Herron has for
9 these phone calls, you know, we are talking about -- look at
10 the phone calls. He's on the phone with lots and lots of
11 people. You have all the phone records.

12 Ronald Herron is a very busy, very active person.
13 These are not the only people he talks to. Look at the phone
14 numbers. Take all the phone records and look at them.

15 You are going to see that there is a lot of phone
16 numbers that don't belong to any of these people. There are a
17 lot of calls that are with these people, because these people
18 are involved in his life. They are involved in him making the
19 project music videos. They are involved in all of the kinds
20 of things that he is involved in, especially Joseph Garcia,
21 who they tell you has twelve hundred calls over some period of
22 some years. I don't remember.

23 You know, we have here a system of justice that
24 people have to feel and believe can deliver justice, a system
25 that we have to feel we can rely on, to that in our

1 communities, for your families, for our neighbors and for us.

2 My client has been locked up in this case or he was
3 arrested in October 2010. You have heard from these
4 codefendants, cooperators, that are facing these crushing
5 cases with crushing evidence of their own serious federal
6 crimes, that they say he did all these things that they say he
7 did.

8 That's what the government has brought you. And I
9 say to you, and I submit to you, that what that really is is
10 the opposite of police work and the opposite of bringing
11 reliable proof and the opposite of delivering to us a system
12 of justice that can be relied on.

13 So I am finished, figuratively not literally, but I
14 am finished. And right here, right now, you know, you people
15 have a job to do in this case and you are the only people in
16 the whole planet who have the power to decide this case and to
17 deliver a verdict and to pass judgment on a man who is being
18 prosecuted by the government and soon that's what you are
19 going to be called upon to do.

20 I just really ask you to do one thing and to ask
21 some of the questions that I have proposed to you are relevant
22 in this case and make the government give you answers as to
23 why they don't have the kinds of evidence that I have talked
24 about, but also to treat this case as one of the most
25 important things that you have ever been involved in in your

1 life. Because you know that the verdict you deliver, that
2 that is something that my client's fate depends on.

3 (Continued on next page.)
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1 (CONTINUING)

2 MR. SOLOWAY: Your verdict is going to determine
3 whether my client goes to jail for the rest of his life or
4 whether he goes home to his family and the people who love
5 him. So, you should, in doing that job, think about and
6 inquire individually and collectively whether the evidence
7 that the Government has given you is the kind of evidence that
8 makes you say that you can rely on to say this case is proved.
9 Can we rely on the evidence the Government has delivered to
10 send this man to prison or not? I submit to you that the
11 Government has failed to do that and that you should find him
12 not guilty.

13 Thank you.

14 THE COURT: We'll take a five-minute break.

15 All rise for the jury.

16 (Jury exits.)

17 (In open court; outside the presence of the jury.)

18 THE COURT: All right, please be seated.

19 We've gone an hour past the hour-and-a-half that you
20 mentioned, which is fine, but I'm going to have Mr. Reccoppa
21 ask them whether they're willing to stay until 8:30 and if
22 they are, we'll just go right ahead with it. If not, we'll
23 come back Wednesday morning and finish.

24 (Pause in the proceedings.)

25 THE COURT: Mr. Reccoppa advises me that the jury

1 wants to stay and finish, so now this is my first opportunity
2 to conduct night court.

3 So, let's take five minutes and then we'll have
4 night court.

5 (Recess taken.)

6 (In open court.)

7 (Judge NICHOLAS G. GARAUFGIS enters the courtroom.)

8 THE COURT: Are you ready to proceed?

9 MS. PAUL: Can you give me just another minute or
10 two, Judge?

11 THE COURT: Sure. The sun goes down today at 8:31.
12 Is there a chance we'll be done by then?

13 MS. PAUL: Yes, yes, I hope so.

14 (Pause in the proceedings.)

15 THE COURT: All right, are you ready?

16 MS. PAUL: Why not, Judge, it's late.

17 THE COURT: Bring in the jury, please.

18 (Jury enters.)

19 THE COURT: Please, be seated.

20 All right, the Government may give its rebuttal.

21 I also want to, before Ms. Paul begins, thank the
22 jury for making itself available to complete the closing
23 arguments this evening.

24 You may proceed.

25 MS. PAUL: Thank you.

1 REBUTTAL SUMMATION

2 BY MS. PAUL:

3 MS. PAUL: We do thank you. Did everyone have a
4 cookie?

5 THE JURY: Yes.

6 MS. PAUL: Okay.

7 Mr. Soloway told you over the last few hours that
8 all we have here are cooperating witnesses. We've got no DNA
9 evidence, no fingerprint evidence, all we have are witnesses.

10 Now, some cases are solved by DNA evidence. A
11 sexual assault case, for example. A whodunit where all you
12 have is a piece of science that links a person to a crime and
13 some cases are solved by fingerprint evidence, a crime like a
14 burglary where a burglar hangs on to a window and no one knows
15 who did it until they get the print and it's him.

16 But most often, as you heard from Detective Yero,
17 the homicide detective from the Victor Zapata homicide,
18 remember him? As you heard from him, more often than not,
19 cases are solved by witnesses. People. People that were
20 there to see it with their own eyes. And in this case the
21 witnesses are the people that the defendant chose to be with.
22 Criminals. People that work for him. His eyes and his ears
23 on the street. They're not law-abiding hard-working people
24 with nine to five jobs that pay taxes. They are criminals.

25 Feo is your witness because if Feo didn't tell you

1 what happened in the elevator when Richard Russo lost his
2 life, how he saw the devil in the defendant's eyes and how
3 they casually stopped for a snack at Subway after the
4 defendant murdered Richard Russo in cold blood, there would be
5 nobody to tell you that because no one else was there.

6 Jo-Jo Garcia, Crystal Lewis are your witnesses
7 because they're his workers. They're people that are doing
8 his bidding on the street. They're the people taking risks,
9 they're the people getting arrested, they're the people on an
10 undercover buy video handing out drugs. Not him. You're not
11 going to see him on an operation trident undercover video
12 because that is not how Ronald Herron operates. He built an
13 organization, an enterprise around people that do things for
14 him and insulate him from detection by the police. He's the
15 boss and he's always on the move.

16 So you see the cooperating witnesses are not
17 witnesses that the Government chose. They are witnesses the
18 defendant chose to have around him. And they decided to
19 cooperate and we're going to get to Mr. Soloway's argument in
20 a bit, but it's not because they have out of the goodness of
21 their own hearts as Mr. Nitze told you. It's because they
22 want a chance at leniency. But as Mr. Nitze also told you,
23 that's the beginning of the inquiry you have to make when you
24 consider these witnesses. They're the beginning of the
25 inquiry.

1 What the defendant was counting on at this trial was
2 that these witnesses, these people, the people that are around
3 him that know firsthand his capacity for violence, the people
4 that know that he's the big homey of the Murderous Mad Dog
5 Bloods, that they would be too scared to testify here in court
6 or loyal enough to testify for him, perhaps, as we saw this
7 morning when M-Dot took the stand.

8 Because we all know how Ronald Herron feels about
9 snitches and rats. You saw earlier when Mr. Nitze played his
10 Project Music video, you know it because of the life that
11 Angel Figueroa has led since 1999 when he had the poor sense
12 to snitch on Ronald Herron and he spent the rest of his life
13 running away from this man, terrified that he's going to kill
14 him if he sees him. All of these witnesses are scared.

15 Imagine what it might be like to be a cooperating
16 witness in prison cooperating against the big homey of the
17 Murderous Mad Dog Bloods. Imagine. But you don't have to
18 imagine because you saw it on display. You saw the fear on
19 full display. You saw men, grown men in prison, facing long
20 sentences, long periods of incarceration who lied to you
21 because they're concerned about the reach that Ronald Herron
22 has.

23 And Vincent Winfield told you what it means to be on
24 a plate, what it means in the Bloods when you're on a plate.
25 That you are food for the Bloods and if they see you in prison

1 they're going to kill you on sight or assault you. Like Moose
2 says in that video that you saw at the hospital. We eat
3 those. That means we kill them.

4 So, cooperating against Ronald Herron is not
5 something that any of these witnesses takes lightly and you
6 should consider that when you evaluate their testimony. All
7 of them. Even a killer like Saquan Wallace was nervous about
8 doing it, I submit to you, about coming here and facing the
9 defendant.

10 Mr. Soloway doesn't mention that. He's going to
11 have you disregard and dismiss the fear that Ronald Herron
12 puts into the heart of cold-blooded killers. Witnesses for
13 the Government you saw it in and witnesses for the Defense.
14 And you all know that the Bloods is a street gang that deals
15 in violence and murder and retaliation and drug dealing. You
16 heard from the members of the Bloods about what Bloods did to
17 the Gowanus Houses.

18 They terrorized the community, they sold drugs on
19 the street, in apartments, they took over other people's
20 apartments, they made them stash houses, they shot rivals,
21 they had innocent people in the day and night with shootings
22 around them; people going to the laundromat, people going to
23 pick up their kids from school. The Bloods terrorized the
24 Gowanus. So, for the Defense witnesses to get up and tell
25 that you this is some kind of benevolent street gang is

1 absurd.

2 But Mr. Soloway didn't mention any of these
3 witnesses when he summed up before you. That's because all of
4 them, I submit to you, were getting on the stand and lying to
5 you for Ronald Herron. Let's start with M-Dot.

6 M-Dot who tells you that he doesn't know what a
7 snitch is and what a rat is, that's nonsense. You all knew
8 what that was before you walked in this courtroom, I would
9 imagine. M-Dot, a self confessed member of the racketeering
10 enterprise run by Ronald Herron for which he pleaded guilty to
11 and is awaiting sentence, he doesn't know what a rat is or a
12 snitch is. Nonsense. Why is he doing this? He's not doing
13 it because he has morals and principles. He's not doing it
14 because he thinks it's what's right. He's doing it for the
15 big homey. He's holding down the big homey.

16 And what about Jonathan rice? Same thing. Jonathan
17 Rice, I submit to you, was a good Defense witness but he was
18 one of the most sympathetic victims in this case. That guy's
19 an armed robber in jail for 15 years and he is under the thumb
20 of Ronald Herron in a way that the witnesses that testified
21 for the Government used to be. Jonathan Rice still is. That
22 guy gave up his entire settlement money for the defendant, for
23 some promise of a rap career. And the defendant never did
24 anything for him. He didn't drop a dollar in his commissary
25 account. No. Ronald Herron doesn't care about Jonathan Rice.

1 And why is Kendale Robinson testifying at this
2 trial? He's the victim of that shooting. He's the victim and
3 he's testifying for the Defense. Why is he doing that? He's
4 lying for the big homey. He's here, convicted himself of
5 murdering a witness. He feels the same way about snitches
6 that Ronald Herron does. He's got nothing to lose and
7 everything to gain by testifying for the big homey. He's in
8 jail for the rest of his life and he's currying favor with
9 Ronald Herron.

10 Now, Mr. Soloway's argument about cooperators would
11 suggest that this is a huge conspiracy between a bunch of
12 people with some motivation to frame the defendant. These
13 people are involved in the defendant's life in different ways
14 from different time periods and they all tell you the same
15 thing. Their testimony is interlocking and it is corroborated
16 by all of the evidence. And you know why? Because it's the
17 truth. It's the truth. Half of these people don't even know
18 each other. Let's talk about some instances of that.

19 Angel Figueroa has been incarcerated since May 6th
20 of 2008. He doesn't know Vincent Winfield or Saquan Wallace.
21 Desiree Taylor doesn't know Musa Marshall. And they all tell
22 you the same thing. Why? Because they're coached by the
23 Government, which we'll get to in a minute? No. Because it's
24 the truth. It's the truth.

25 Some of them have every reason to hate each other.

1 Do any of you remember when you learned that Saquan Wallace
2 killed Crystal Lewis's sister's baby's father? Do you
3 remember hearing that? That her sister got shot by Saquan
4 Wallace. Saquan Wallace and Crystal Lewis are not in some
5 conspiracy lying to frame Ronald Herron.

6 And Mr. Soloway talked to you a lot about meeting
7 with the Government. Saquan Wallace came in and told the
8 Government about the 2001 homicide of Frederick Brooks in
9 April 2008. April 2008. You want to know what was going on
10 in April of 2008? It was a month before the Russo homicide.
11 Rafael Gonzalez was on the street working for Ronald Herron,
12 as was Crystal Lewis and all of the other people that you've
13 heard about. He tells you about that homicides -- he tells
14 the Government about that homicide in 2008 and sure enough, it
15 is entirely consistent with Rafael Gonzalez's testimony about
16 what happened.

17 With all respect to Mr. Soloway, maybe he is living
18 in a fantasy world. Mr. Soloway would have you believe that
19 it's some kind of an unfortunate coincidence that all of the
20 physical and forensic evidence and the other witnesses
21 powerfully corroborate the testimony of each and every
22 witness. It is not a coincidence that all of the people that
23 testified before you told you who the holsters were and the
24 muscle were for Ronald Herron and who held the pistols. And
25 'lo and behold, who's arrested with Ronald Herron in a car

1 with a gun? December 21st, 2008, Ronald Herron's in the car.
2 He admitted to you that he was in the car with Vincent
3 Winfield and Vincent Winfield jumped out and ran and had that
4 22 caliber gun and the other one that he threw and the police
5 didn't find. Ronald Herron was in the car. He told you that.
6 It's not a coincidence.

7 And on October 1st, 2009 three days after Victor
8 Zapata was killed Ronald Herron is in the car with another one
9 of his co-conspirators Sharif Holmes. And guess what?
10 There's a gun in the car. Why? Because he's running this
11 enterprise. And because he just killed Victor Zapata.

12 And on October 5th, 2010, when he's arrested in
13 front of the Club Amnesia, 'lo and behold M-Dot and Caraballo
14 are in the car with him and there's a gun. Not coincidence.
15 Corroborating evidence of all these witnesses.

16 Now, Mr. Soloway spent a lot of time on all of the
17 different cooperating witnesses, so I am going to go through
18 some of them with you now. Let's start with Rafael Gonzalez.

19 You saw and you met Rafael Gonzalez. Do you think
20 any of you were fooled by Rafael Gonzalez? The guy who's
21 nickname means ugly in Spanish? The guy who can't read. The
22 guy whose master criminal caper that he undertook by himself
23 was the robbery of a weed guy named Dave. Does anyone
24 remember how the weed guy named Dave, that caper, turned out
25 for Rafael Gonzalez? Dave just ran away.

1 MR. SOLOWAY: Objection.

2 THE COURT: Overruled.

3 MS. PAUL: Well, it's your recollection that
4 controls, but my recollection is that the weed guy named Dave
5 ran away from Rafael Gonzalez and that was the end of that
6 sophisticated plot to rob him that Feo came up with all by
7 himself.

8 Feo didn't fool you. He didn't fool the Government.
9 He didn't fool Ronald Herron because Ronald Herron saw in him
10 the exact same thing that you all did when he testified before
11 you and that was dumb loyalty. Feo loved Ronald Herron like a
12 brother. He looked up to him. He worshipped him. He was
13 willing to kill for him and Mr. Soloway is right, that Feo had
14 very little in his life. That's true. You saw that. And the
15 blind worship of Ronald Herron is the reason that he ended up
16 in that elevator with him when the defendant murdered Richard
17 Russo.

18 Now, Mr. Soloway wants to suggest that he's some
19 sort of a criminal mastermind that undertook this testimony
20 and got on the stand before you and lied because he's the real
21 killer in the elevator. It's him. And Mr. Soloway suggests
22 to you that there is no reason that Ronald Herron would kill
23 Richard Russo in the elevator. That killing someone for
24 disrespecting you is a trivial and senseless thing and that is
25 something Ronald Herron wouldn't do.

1 I would submit the opposite. It's exactly something
2 that Ronald Herron would do. It is certainly trivial and
3 senseless to murder somebody in an elevator in a lobby of the
4 Gowanus Housing Development in broad daylight. It's trivial
5 and senseless to anyone who's thinking clearly. But Ronald
6 Herron is not thinking clearly.

7 And Mr. Soloway asks you why would you kill someone
8 in your own building where you're trying to sell drugs and
9 mess up the drug business and that initially sounds like an
10 interesting argument. But you saw a little window into Ronald
11 Herron's mind when he testified before you and that guy in the
12 V-neck sweater and the tie and the glasses, the guy who's
13 apologizing for curse words, that is not Ronald Herron. But I
14 submit to you that there is a little glimmer of Ronald Herron
15 here and there when you listen closely. And one of the times
16 was when he talked about his beef that he had with Slow. The
17 beef that ended in Slow's murder two days after Herron got
18 shot in the leg. And what he tells you is this. Eventually
19 we had a fight and I beat him up. Why? I felt disrespected
20 by him.

21 And how? What did he do that you felt disrespected?

22 I felt he snubbed me. He had my money and he wasn't
23 trying to pay me back my money, I just felt slighted.

24 Slighted. That's how he felt. And that is enough
25 for Ronald Herron to murder Richard Russo in the elevator.

1 And it does relate to his business. It does relate
2 to his business. Because Ronald Herron demands respect in his
3 business and now and again, when there's someone yapping
4 around in the lobby of 423 Baltic about how he's not afraid of
5 you in front of your workers, it makes sense to put an end to
6 his life, right there in the lobby of 423 Baltic where he's
7 talking about you.

8 Mr. Soloway suggests that Rafael Gonzalez has a
9 motive to kill Richard Russo. Well, I agree. But it's not a
10 motive over a loud stereo. You saw him on the stand. He
11 doesn't care about that beef that his brother had with Richard
12 Russo. You saw him, he couldn't care less. What he did care
13 about, the only thing that he cared about that he actually did
14 get upset is when Richard Russo was talking about Ronald
15 Herron. He got upset. He told you about that. He said he's
16 going go get a gun and kill him.

17 And Tyhe Walker talks him out of it. Why would he
18 tell you that? Why did he tell you that? If he's trying to
19 pin a murder on Ronald Herron, he's telling you that because
20 that is how he felt in the moment. Rafael Gonzalez is a
21 confused individual, okay? But Rafael Gonzalez is not stupid
22 enough to kill someone in the lobby of the defendant's
23 building without his permission. He's not sophisticated. I
24 bet you if Ronald Herron had asked him to kill Richard Russo,
25 he would have done it, but he didn't. And he told you that.

1 And he is not smart enough to make up that kind of a lie and
2 keep it up. And everything corroborates Rafael Gonzalez.

3 Now, Mr. Soloway wants you to listen to one part of
4 Joseph Garcia's testimony and he likes that part, so he wants
5 you to listen to that part but not the other part, but I
6 submit you should listen to all of Joseph Garcia's testimony
7 because he was telling you the truth. But in any case, Joseph
8 Garcia's testimony about what's happening in the lobby of 423
9 Baltic on the day that this murder occurs corroborates Rafael
10 Gonzalez.

11 What does he tell you? Ronald Herron's there, Tyhe
12 Walker is there. Feo's there. Russo's there. And then Jo-Jo
13 leaves and he doesn't know what happens next. He sees Herron
14 and Tyhe talking in the back, presumably about the fact that
15 Rafael Gonzalez told Tyhe Walker that Russo was saying things
16 about Ronald Herron and then Joseph Garcia goes upstairs and
17 that's when the murder happens. They are not inconsistent.
18 They are consistent. His testimony corroborates Rafael
19 Gonzalez.

20

21 (Continued on following page.)

22

23

24

25

1 MS. PAUL: Mr. Soloway talked about the motive that
2 Rafael Gonzalez had to lie because he didn't get the part in
3 the We All Fucked Up video and Mr. Soloway said I'm going to
4 get up and say he's crazy. I'm not going to see he's crazy.

5 What I am going to say is that Rafael Gonzalez was
6 all over that video. You saw that video. The guy had
7 basically one of the lead parts in that video. He's not mad
8 about the video. What he's upset about in 2010 when that
9 happens is the deterioration of his relationship are Ronald
10 Herron because you know that after that murder Rafael Gonzalez
11 distanced himself and the phone contacts show you that if you
12 read the stipulation that's in evidence.

13 And the truth about that video shoot is it was the
14 time for Rafael Gonzalez after years and years of following
15 behind Ronald Herron, of watching all of these acts of
16 violence go down and protecting him in his mind, in Rafael
17 Gonzalez's mind, that it finally clicked for him, that they
18 were not friends, that they were not brothers, that the way
19 that Rafael Gonzalez felt for Ronald Herron was not the same
20 way that Ronald Herron felt for him. And shortly thereafter
21 the defendant threatened to kill him over some cash and at
22 that point Rafael Gonzalez had enough.

23 Mr. Soloway said something about the Diana Flowers
24 insurance records from the car accident in 2010 being like a
25 oak tree, a oak tree I think he said in Central Park. She can

1 make whatever you want up and the oak tree is going to be
2 right there. The insurance records are not the oak tree. The
3 insurance records are an extremely powerful piece of
4 corroboration that Rafael Gonzalez could have never known
5 about, never known about. When he said that he went to Diana
6 Flowers's house with the defendant and switched cars, how
7 could he know that Ronald Herron would happen to be in an
8 accident in that very car the day after the murder?

9 And what about Angel Figueroa? Mr. Soloway says
10 that Angel Figueroa is alive and well. Angel Figueroa is
11 lucky to be alive and well. Angel Figueroa is not the
12 sharpest knife in the drawer. He's certainly not a master
13 manipulator who is pulling the wool over everyone's eyes, who
14 is a master cooperator that's coming in and telling the
15 government things and at the same time not telling the
16 government things.

17 The guy has been in jail for the better part of his
18 life. The guy did a year in a drug program and then did five
19 additional years after that. This guy is not some master
20 manipulator.

21 And yes it appears to be true that Angel Figueroa
22 was not honest when he talked to his probation officer. Seems
23 like he lied about his own criminal conduct back in 2003 when
24 he was interviewed by probation.

25 I don't think it's going to come to you as a

1 surprise that criminals sometimes lie when faced with their
2 criminal conduct. You saw it on the witness stand when the
3 defendant took the stand just a few days ago.

4 And Probation Officer Power told you that she
5 couldn't remember exactly what happened, that she looked at
6 her notes and then Mr. Soloway showed you what she wrote down
7 in her report. She didn't remember and I submit to you that
8 Angel didn't remember that either. He remembered a
9 conversation, which is what he testified about, that he had
10 with a female probation officer who came to the Samaritan
11 Village and he was right, that did happen. The probation
12 officer told you that someone visited him in the Samaritan
13 Village and perhaps at that time is when he told the truth
14 about what he did.

15 MR. SOLOWAY: Objection.

16 THE COURT: Overruled.

17 MS. PAUL: This is not a lie. He is not lying.
18 This is not I don't know what a snitch is. It's not M Dot.
19 He forgot about that conversation. He doesn't remember it.
20 He clearly lied about it in 2003, if you read that report, but
21 he doesn't remember it today.

22 And it's difficult for Mr. Soloway to say that
23 everything Angel Figueroa says is a lie when his own client
24 corroborates almost all of it. Should you disregard his
25 entire testimony because he lied once in 2003? No.

1 Everything he says is corroborated by the defendant, that he
2 lived with him at 423 Baltic in 1998 and 1999, that he -- they
3 were running a drug organization there in 423 Baltic with
4 Nesto and Tom Tom and Quan and D, everyone that Angel said was
5 there, they were all there and Angel was there. It's all
6 true.

7 The only thing that's in dispute is a three-month
8 period in 2008 when Angel Figueroa was home and the defendant
9 kidnapped him and threatened to kill him and made him sell
10 heroin for him until Angel Figueroa was busted by an
11 undercover.

12 And when you consider that, you should ask yourself,
13 this is May 6 of 2008 and you all know what happened on May 9
14 of 2008. Richard Russo was murdered. Does this sound like --
15 what Angel Figueroa described to you, does that sound like
16 Ronald Herron in May of 2008? Where was his head at three
17 days before the murder of Richard Russo and Mr. Soloway asks
18 you why didn't he kill Angel? This is not a tidy little
19 package that the government would have you believe it is. No.
20 It's not tidy. It's murder. It's murder.

21 I don't know why he didn't kill him. Maybe he
22 didn't kill him because he wanted him to go and make some
23 money. He wanted to humiliate him, make him stay downstairs
24 and sell his heroin. Maybe he didn't kill him because there
25 were witnesses there and he learned from 2001 that witnesses

1 make powerful evidence when they see what you did.

2 This is a guy who stopped at Subway after he killed
3 Richard Russo. I mean, talk about tidy, it's not tidy. It's
4 inside of the defendant's mind.

5 And Angel Figueroa didn't know when he got arrested
6 by the police on that day that just three days later the
7 defendant would commit the murder. And then all of these
8 witnesses would come in and would corroborate him even more.

9 He testified about why he's testifying here. He
10 said I'm trying to get the lowest sentence I can, but also to
11 protect myself. I'm tired of being scared of him. I'm tired
12 of running from him. I'm tired of having to watch my back
13 every time I walk down the street or my family being
14 threatened if I don't do what he says.

15 Then Mr. Soloway also talked to you about Crystal
16 Lewis. And he spun a narrative designed to put the government
17 in a bad light. Mr. Soloway can't have it both ways. He's
18 suggesting he's not saying that the government did anything
19 improper. He's not suggesting that we put ideas in their
20 heads or that we're coercing people into saying something.

21 That's exactly what he's saying and there is no
22 support for that in the record before you. There's no support
23 for that and you shouldn't speculate about that because
24 there's no evidence of that. Every witness told you, every
25 witness told you, they don't know who is testifying at this

1 trial. They were told by the government to tell the truth.
2 That is what the evidence is.

3 And there's testimony from Crystal Lewis in the
4 record that she was hostile and abusive to the government when
5 she came in at first. And she said why that was. She said
6 that she was covering for other people in the beginning, that
7 she was advised by the lieutenant of Ronald Herron, Mr. Mejia,
8 Moose, not to snitch, to say a little bit to the government
9 but don't say too much. Don't be a snitch.

10 And that's what she did. She covered for Ronald
11 Herron in the beginning. And she was denied bail. That's
12 true. By a judge. And eventually she told you that she had a
13 choice to make and here's what she told you: On page 2435:

14 "QUESTION: Ms. Lewis, why did you change your mind
15 about how to approach your case? Why did you decide to start
16 telling the truth?

17 "ANSWER: Because my daughter suffered. She had
18 sleepless nights. She was failing in school and it wasn't
19 fair to her that she lost her father to the system, to the
20 streets, and then she's going to lose her mother to the
21 system.

22 How did you view your choice when you made that
23 decision?

24 It was either Herron or my daughter.

25 And you chose your daughter?

1 Yes.

2 She's not pressured by the government to say
3 something that's not true. She's confronted with the reality
4 of her situation, that she conspired to murder Victor Zapata
5 with Ronald Herron, that she was a member of his drug
6 organization.

7 And Mr. Soloway read to you from page 2404. I'm
8 going to read to you from the next page, 2405 which he didn't
9 read to you:

10 "QUESTION: And you felt like you were being
11 threatened by the agent to make you to confess to things that
12 you did not know? Is that right?

13 "ANSWER: No.

14 "QUESTION: I'm sorry.

15 "ANSWER: No.

16 "QUESTION: Okay. Didn't you feel like you were
17 being threatened so the agent could make you confess to things
18 you didn't know?

19 "ANSWER: No.

20 "QUESTION: Oh.

21 "ANSWER: I wasn't being threatened for things I
22 didn't know. It was for things I didn't want to say."

23 And these threats you heard from special agent
24 Marayag about how proffers work, how proffers work, and she
25 told you in the beginning they don't trust us and we don't

1 trust them. Something like that. I don't remember her exact
2 words. And that there are meeting after meeting after meeting
3 where the government meets with these people and talks to
4 them. It's not come on in and tell the government what you
5 think that the government would like to hear and you could
6 just walk out the door. It's true Crystal Lewis did get bail.
7 She was out on bail at some point. The government took no
8 position at her bail hearing and the judge let her out of
9 jail.

10 That is not how this works. Remember, there is
11 other evidence in this case. It is not just witnesses that
12 are coming in and saying something to frame Ronald Herron and
13 the government is playing along. I mean like the government
14 has nothing better to do than frame Ronald Herron with a bunch
15 of random people who don't know anything about him.

16 And after all Crystal Lewis talked about a lot of
17 things. But if she were going to be lying here because of
18 something that the government told her to say I would submit
19 to you that it would be a lot better than she doesn't know who
20 shot Moose. She came at the tail end and saw Moose there.
21 She doesn't know who shot him. Mr. Soloway asked her isn't it
22 possible, isn't it possible it could have been because Moose
23 was robbing people and she said I guess so. It's possible.
24 Anything is possible, right? If she was testifying to frame
25 Ronald Herron or because the government somehow gave her a

1 script and told her what she had to say, she wouldn't say
2 that. That's not what's happening here.

3 Mr. Soloway asks you where the money is. Where is
4 the money? He says his client is broke. This is a guy who
5 had the means to purchase an automobile shortly after being
6 shot in the groin by Slow. This is a guy with Jonathan Rice's
7 ATM at the ready. This is a guy with no job. Drug dealers do
8 not file income taxes. They don't take credit cards in their
9 drug operations. They don't put their illegal money into a
10 savings account so it can be traced. This is a cash business.
11 Cash in, cash out. Cash to buy guns, cash to by body armor,
12 cash to by jewelry, cash at Perks.

13 Saquan Wallace told you exactly what drug dealers
14 spend their money on: Cars, jewelry, apartments, furniture,
15 traveling, clothes. You all know of at least three places
16 where Ronald Herron was living, Desiree Taylor's apartment he
17 paid her rent. His girlfriend's apartment, of course, which
18 we know nothing about and his mother's place.

19 And you know at least three cars that he had. Why
20 is this guy with no job have three cars in Brooklyn? What
21 does he need the Lincoln navigator and BMW and the Acura that
22 he was driving when Officer Ouk saw him when he was with
23 Vincent Winfield and he got out of the car and was arrested
24 with that gun. What does he need those for? Not to rap.
25 Because he's a drug dealer driving around, spending his

1 disposable income on whatever he feels like spending it on at
2 the moment, cars, for example.

3 And Mr. Soloway says, oh, the government's going to
4 point out that he had \$2,000 in cash on that one day. Yes.
5 We're going to point that out. Who has \$2,000 in cash on a
6 casual day in the Gowanus housing development? He's just
7 standing around with \$2,000 in cash in his pocket. That's a
8 drug dealer who just picked up some money from one of his
9 workers.

10 This is a guy that has everything in his life
11 registered in everybody else's name. You heard that. Halima
12 Whelless, his girlfriend, the Navigator is registered to her.
13 His phone, Halima Whelless, registered to her. His other
14 phone, it's in evidence Government's Exhibit 600, James
15 Benbow, registered to him. Why is that? Why is that? That's
16 to evade capture by the police. That's to hide what you're
17 doing from law enforcement.

18 So it's really not a huge surprise that there is no
19 document to show you that reflects his annual earnings to let
20 you know how much he exactly made in one year when he was
21 slinging crack in the Gowanus with Jo-Jo and Crystal. There's
22 plenty of evidence. There may be no evidence like that, no
23 document like that, to show you how much money he made, but
24 there's plenty of evidence that shows you how much -- sorry --
25 there's plenty of evidence that shows you that he made it.

1 And Mr. Soloway spent a lot of time talking to you
2 about different additional types of evidence that the
3 government might have produced to you in this case. You will
4 hear an instruction from Judge Garaufis about investigative
5 techniques. The government does not have to prove its case in
6 one particular way or another. The question is not did you
7 dream up some other type of evidence that you could think of
8 that could have been here and is not here. It's what evidence
9 do you have here and does that prove the defendant's guilt
10 beyond a reasonable doubt and it does.

11 Now, I'll spend a second on fingerprints because it
12 was a subject of a lot of cross-examination. Fingerprints,
13 spent shell casings, fingerprints on the spent shell casings
14 and you heard witness after witness after witness get on the
15 stand and tell you that that is a very difficult thing to get
16 off of a spent shell casing that is fired through a gun with
17 such high heat.

18 (Continued on next page.)
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1 MS. PAUL: (Continuing)

2 You heard also, I don't know what trial Mr. Soloway
3 was at, but you heard also that all of these scenes are dusted
4 for prints. The guns are dusted for prints, the scenes are
5 dusted for prints. Unfortunately, there were negative results
6 here.

7 That's not a lack of evidence. It's not lack of
8 evidence.

9 This is not CSI. This is real life.

10 What about a wiretap? Don't speculate about what a
11 wiretap entails or why one wasn't done on Ronald Herron's
12 phone. That is a distraction that Mr. Soloway brings to your
13 attention to distract you from the 60 witnesses that testified
14 before you about all the different types of evidence that
15 there are in this case, about all of the evidence that you
16 have seen as you sat here day after day after day over the
17 last few weeks, and watched the testimony.

18 You know, the burden of proof beyond a reasonable
19 doubt is the same in every criminal case. It's the same in a
20 turnstile jump case and a murder case. People are convicted
21 every day in courtrooms with the same burden of reasonable
22 doubt.

23 A turnstile jump, a person can be found guilty of
24 turnstile jumping with the testimony of a single officer that
25 observed the person jump the turnstile.

1 This is not how much evidence else can you think
2 about that you might want to have or you might dream might be
3 useful to you. It is what do you have and does it prove the
4 defendant's guilt beyond a reasonable doubt, and it does.

5 I will point out one thing. Mr. Soloway mentioned
6 that the defendant was not on the Operation Trident videos.
7 That's true. He is not. He is not in Verdreea Olmstead's
8 apartment slinging crack with Joseph Garcia as you saw in the
9 video earlier today. He's in Desiree Taylor's apartment
10 waiting to reup the people that come over and pick up drugs
11 and give him money.

12 But you know very well that he is in the Gowanus. I
13 don't know if you noticed when you all were watching the video
14 of the undercover, it was the second undercover, the one that
15 was still undercover. There was the video from October 7,
16 2008. It was the video that Moose was on. He was walking
17 around and Tyhe Walker was there. It happened at about 1:20
18 in the afternoon.

19 Do you remember what else happened on October 7,
20 2008? At 6:00 pm? The defendant stopped in the Gowanus after
21 police respond to a call about illegal activity and he's
22 wearing body armor.

23 What is he doing in the Gowanus at 6:00 pm on the
24 day that you saw wearing body armor? You know what he's
25 doing. You saw it in his reality television series project

1 music. He's riding around his hood surveying his terrain.
2 They're protecting his drug organization with his lieutenant
3 and his muscle.

4 I am going to spend a moment on the 2001 homicide.
5 Mr. Nitze reviewed how each witness in that homicide was
6 corroborated. I am not going to go over it again in great
7 detail because it's late. I am going to go through some
8 specific arguments.

9 First of all, why are we arguing so much about the
10 distance between the door and whether or not you could have
11 actually seen through the window. Why are we arguing so much
12 about that? Why is Mr. Soloway making so much of that?

13 Because the evidence in the Brooks homicide is
14 overwhelming. Overwhelming. There are independent
15 eyewitnesses that testified before you that have absolutely no
16 reason to lie to you, that all interlock with each other.

17 He's arguing about that window, which Mr. Nitze
18 showed you is perfectly, in twelve different ways, you can
19 perfectly see through, because that's all there is to argue
20 about.

21 This is not Darnell Saunders. Darnell Saunders is
22 not the real killer.

23 First of all, does Darnell Saunders seem to you like
24 the type of person that can pull the trigger? It's true, he's
25 a crack dealer. He is not a murderer.

1 If he has the fortitude, the cruel strength to shoot
2 a person in the face and then frame Ronald Herron, get
3 Ms. Pack, who is not related to him, Amber Hudson, in on the
4 frame, then why not take the next step? Why not put the nail
5 in the coffin when he's there, ready to take the stand in
6 2002?

7 When he's faced with testifying at the trial in
8 2002, he doesn't jump on the stand, point the finger at Ronald
9 Herron and say, it wasn't me. He weeps in the corner of the
10 District Attorney's office about his family because he's
11 scared.

12 Mr. Soloway again said there is no forensic evidence
13 that links his client to this scene. I don't know what trial
14 Mr. Soloway was at. There are 380 shell casings at that
15 scene. The same type of gun that Saquan Wallace told you that
16 he had, that Ralph Gonzalez told you that he had, that the
17 medical examiner told were shot into the body of Frederick
18 Brooks.

19 Let's spend a moment talking about the defendant's
20 testimony. The defendant has no burden or obligation to tell
21 you anything. The burden is on the government, as Mr. Nitze
22 told you. But he testified and you should evaluate his
23 testimony.

24 You all were here and I'm sure many of you have
25 children and some of you have children that have lied to you

1 and you know what that sounds like.

2 Did you do it?

3 No.

4 Did you kill Richard Russo?

5 Russo? No. Russo, like he doesn't know who Richard
6 Russo -- he has been sitting in this trial for a month.

7 The entire testimony was an act.

8 You saw him on his project music video. That's him.
9 People to clean up on the street, see you soon at a cemetery
10 near you. That's not ad-libbing. It's not ad-libbing.

11 The most significant thing that many of you may not
12 have noticed though when the defendant took the stand in a
13 dark room was that he looks exactly like the guy in the
14 surveillance video that killed Victor Zapata. He was sitting
15 there with his glasses in a dark room reflecting the light in
16 the same exact way that it is on that video. It's him.

17 What does he have to tell you about where he was on
18 June 16, 2001? He doesn't have to tell you anything but here
19 is what he tells you.

20 He admits what he can't deny and he denies what he
21 can't admit. He admits that he is selling drugs there, 198
22 Bond at the time. That's true.

23 He knows Darnell is selling there. That's true.

24 But of course he can't say that he shot Frederick
25 Brooks in the case, so what does he say?

1 I was with a female friend at 130 Third Avenue in
2 Zeina's apartment and I didn't come outside until the next
3 morning.

4 So everyone was framing him, Linda Pack, Darnell
5 Saunders, Rafael Gonzalez, Saquan Wallace, they were all
6 framing him then and they are frame being him now.

7 It is nonsense. That testimony was nonsense.

8 What about the story about Zeina's stash house and
9 why he's there? Curiously, he admits that he knows Omar
10 Ransom. You remember Omar Ransom, Saquan Wallace's mentor,
11 the guy who was running Wyckoff at that time? That's his
12 friend. That's who Saquan Wallace said he met him through.

13 He tells you that Saquan Wallace was just a little
14 kid in the neighborhood that was attracted to the streets and
15 he wanted to be around. That sounds about right.

16 Of course, Saquan Wallace is 29 today and Ronald
17 Herron is 32 so at the time they were 19 and 16. He's not
18 some little kid running around. They are not that far apart.
19 It is probably true, like many of the people in Ronald
20 Herron's life, Saquan Wallace thinks they are friends and
21 Ronald Herron sees what he can use that guy for for his own
22 interests.

23 And who better to commit a murder for you than an
24 eager kid who wants to be out on the streets? Someone who the
25 defendant testified had better shoes and dirt bikes and

1 fashionable sneakers who was trying to prove that he was a
2 violent guy. That's the guy that you ask to kill someone.
3 That's the guy who you ask to get rid of your murder weapon.

4 First he tells you that he -- Omar Ransom had a
5 dispute with Zeina so that the defendant made his own
6 arrangements with her to go in the stash house. Then he says
7 that Omar Ransom was actually still keeping drugs there. It
8 was confusing because it's nonsense.

9 He gives you no explanation about who -- whose 38 is
10 in Zeina's apartment and you want to know why? Because there
11 is no explanation because it's the gun that Saquan Wallace
12 gave him.

13 Ladies and gentlemen, it is now quite late. I am
14 going to thank you again for being very patient and diligent
15 and sitting through this trial for the last few weeks. We all
16 thank you. You have been here. You have been taking notes.
17 You have been paying attention. You are here tonight and we
18 all appreciate it.

19 It has been 13 years almost to the day since the
20 defendant shot Frederick Brooks in the face. And year after
21 year after year has gone by and there has been no justice. He
22 got away with it because he threatened to kill the people who
23 were going to take the stand and tell a jury like you what
24 happened in that lobby. He beat it. He got away with it. He
25 got away with murder.

1 And what did he do? He murdered more people. He
2 executed Richard Russo. He left him for dead on the floor of
3 an elevator. He gunned down Victor Zapata. He watched Victor
4 Zapata run for his life before the defendant ended it.

5 And Ronald Herron just kept on going. No
6 consequences. Only concerned for his power and his money and
7 his reputation.

8 And it is time for it to stop. It's time to put an
9 end to the Ronald Herron enterprise and the senseless and
10 unnecessary violence that it brought to the Gowanus and
11 Wyckoff communities.

12 It is time to hold him accountable for the crimes
13 that the evidence proved that he committed beyond a reasonable
14 doubt. Not because we say it. Because the evidence proved it
15 beyond a reasonable doubt.

16 It is time for you to find him guilty, find him
17 guilty of each and every crime that he is charged with,
18 because the evidence has shown that he is guilty and because
19 that is what justice now demands a.

20 Thank you.

21 THE COURT: Members of the jury, this concludes
22 closing argument. On Wednesday morning, we will have the
23 charge as to the law which I will give to the jury. It won't
24 be necessary for you to bring any notes with you or take any
25 notes because, as I told you previously, you are going to

1 receive copies of the charge when you go back to deliberate.

2 The charge should take all morning and then
3 afterwards 12 jurors will retire to consider the verdict. The
4 five alternates will remain in a separate room. You may want
5 to bring something to read because you will be there as long
6 as it takes for the jury to complete its deliberations. If at
7 any point any juror can't continue to deliberate, the first
8 alternate will take the place of that juror and the
9 deliberations will have to start from scratch.

10 So what I ask you to do is get some rest. We are
11 not sitting tomorrow and we will resume on Wednesday.

12 Notwithstanding that we are here until 8:30 at night
13 tonight, I don't permit juries to deliberate past 6:00 pm. If
14 you haven't completed your deliberations on any given day by
15 6:00 pm, you will have to come back the next week day and if
16 you are still deliberating after Thursday, you will have to
17 deliberate on Friday.

18 I am going to remind you not to discuss the case
19 with anyone, not to discuss it among yourselves. Please leave
20 your notes in the jury deliberation room when you leave for
21 the night. Please don't contact anyone about the case. Don't
22 discuss it with any friends, neighbors, fellow workers or each
23 other, unless and until you are sitting in that jury
24 deliberation room and engaged in actual deliberations.

25 Please don't engage in any kind of research about

1 the case. Don't communicate on any social media. Please
2 don't visit any of the locations identified during the course
3 of the testimony.

4 On behalf everyone, both sides, we deeply appreciate
5 your attention, your willingness to be cooperative and stay
6 late tonight. We will see you Wednesday morning.

7 All rise for the jury.

8 (Jury leaves courtroom and the following occurs.)

9 (Continued on next page.)

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1 (CONTINUING)

2 (Jury exits.)

3 (In open court; outside the presence of the jury.)

4 THE COURT: Be seated, please.

5 We're going to have a second charge conference at

6 10:30 tomorrow morning.

7 Is there anything else from either side for tonight?

8 MR. ARIAIL: Nothing, Your Honor, from the

9 Government.

10 THE COURT: All right, thank you.

11

12 (Adjourned to Tuesday, June 24th at 10:30 a.m.)

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K E N D A L E R O B I N S O N

D I R E C T E X A M I N A T I O N 3733

B Y M R . N E U M A N

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S H O N D E L L W A L K E R

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4 Defendant's Exhibit Y 3819

5 Defendant's Exhibit Z 3820

6 Defendant's Exhibit DD 3821

7 Defendant's Exhibit EE 3822

8 Defendant's Exhibit FF 3823

9 Defendant's Exhibit GG 3824

10 Defendant's Exhibit HH 3825

11 Defendant's Exhibit II 3826

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